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Floor Debate  
April 13, 2010

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LB706 LB712 LB713 LB732 LB758 LB759 LB760 LB771 LB779A LB779 LB789 LB792  
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LB877 LB884 LB894 LB907 LB908 LB918 LB918A LB931 LB933 LB934 LB935 LB945  
LB947 LB950 LB961 LB978 LB986 LB987 LB987A LB993 LB997 LB999 LB1002A  
LB1002 LB1010 LB1014 LB1020 LB1047 LB1048A LB1048 LB1055 LB1065 LB1071  
LB1072 LB1085 LB1094A LB1094 LB1103 LB1109 LB1109A LR224 LR273 LR292  
LR411 LR452 LR538 LR539 LR542 LR544 LR545 LR546 LR547 LR556 LR567 LR568  
LR569 LR570 LR571]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-ninth day of the One Hundred First Legislature, Second Session. Our chaplain for today is Kenneth Chapman, Santee Sioux Nation Council, Niobrara, Nebraska, Senator Dierks's district. Please rise.

PASTOR CHAPMAN: (Prayer offered.)

SPEAKER FLOOD: Thank you. I call to order the fifty-ninth day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SPEAKER FLOOD: (Gavel) Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: There is, Mr. President. (Read correction found on page 1447 of the Legislative Journal.) That's the only correction I have.

SPEAKER FLOOD: Are there any messages, reports, or announcements?

CLERK: Bills read on Final Reading yesterday were presented to the Governor at 12:35 p.m. (re LB507, LB507A, LB563, LB563A, LB594, LB701, LB771, LB779, LB779A, LB800, LB800A, LB918, LB918A, LB931, LB987, LB987A, LB1002, LB1002A, LB1014, LB1071, LB1072, LB420, LB252, LB411, LB695, LB696, LB706, LB713, LB732, LB758, LB759, LB760, LB789, LB792, LB809, LB813, LB829, LB844, LB852, LB872, LB884, LB894, LB907, LB908, LB933, LB934, LB947, LB961, LB978, LB986, LB993, LB997, LB1047, LB1055, LB1065, LB1085, LB1109, LB1109A.) A second communication. (Read re LB420.) That's all that I have, Mr. President. (Legislative Journal pages 1447-1449.) [LB507 LB507A LB563 LB563A LB594 LB701 LB771 LB779 LB779A LB800 LB800A LB918 LB918A LB931 LB987 LB987A LB1002 LB1002A LB1014

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LB908 LB933 LB934 LB947 LB961 LB978 LB986 LB993 LB997 LB1047 LB1055  
LB1065 LB1085 LB1109 LB1109A]

SPEAKER FLOOD: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR544, LR545, LR546, LR547. (Visitors introduced.) Mr. Clerk, we now proceed to the first item on the agenda, legislative confirmation reports. [LR544 LR545 LR546 LR547]

CLERK: Transportation Committee reports on two appointments to the Nebraska Railway Council. (Legislative Journal page 1308.)

SPEAKER FLOOD: Senator Fischer, you're recognized to open on your confirmation report.

SENATOR FISCHER: Thank you, Mr. President and members of the body. The Transportation and Telecommunications Committee held two confirmation hearings on Tuesday, April 6, for the reappointments of Michael Shannon and Patrick Meuret to the Nebraska Railway Council. The Nebraska Railway Council administers programs and funds for the acquisition, rehabilitation, and operation of light density rail lines pursuant to state law and the federal Rail Revitalization Act. All planning functions for participation in the federal act must be performed by a state agency designated by the Governor. Although the council is an independent body, the Department of Roads provides planning functions and staff support. Eight council members are appointed to four-year terms by the Governor and approved by this body. Both Mr. Shannon and Mr. Meuret's terms will run from March 19, 2010, to January 19, 2013. Mr. Shannon's appointment fills the railroad management employee position. He is currently a track foreman with BNSF Railway and he resides in Alliance, Nebraska. Mr. Meuret's appointment fills the rail shipper position. He manages a grain feed livestock operation in Brunswick, Nebraska, where he resides. Both Mr. Shannon and Mr. Meuret submitted letters to the Transportation and Telecommunications Committee in support of their reappointments. The committee recommends this confirmation with all eight members in favor. Thank you, Mr. President.

SPEAKER FLOOD: Thank you, Senator Fischer. Members, you've heard Senator Fischer's opening on the confirmation report from the Transportation and Telecommunications Committee. There are no lights on. Senator Fischer, you're recognized to close. Senator Fischer waives her opportunity. The question before the body is, shall the Transportation and Telecommunications Committee confirmation report be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record.

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CLERK: (Record vote, Legislative Journal page 1449.) 44 ayes, 0 nays, Mr. President, to adopt the confirmation report.

SPEAKER FLOOD: The confirmation report is adopted. (Visitors introduced.) Continuing with legislative confirmation reports, Mr. Clerk.

CLERK: A second report by Health and Human Services Committee involves an appointment for the Commission for the Deaf and Hard of Hearing, Mr. President. (Legislative Journal page 1364.)

SPEAKER FLOOD: Senator Gay, you're recognized to open on your confirmation report.

SENATOR GAY: Thank you, Mr. President. The Health and Human Services Committee reports favorably on the appointment of Diane Muelleman to the Commission for the Deaf and Hard of Hearing. We held a public hearing on Thursday, April 8, to consider her appointment. She appeared in person and answered questions from the committee and the appointment was approved unanimously by the committee. Ms. Muelleman is a new appointment to a two-year term on the commission and she is hearing impaired. She looks forward to representing the interests to facilitate and education and services for those individuals with hearing loss. She obtained a bachelor degree in elementary education and a master's degree in special education with an emphasis on deaf education from the University of Nebraska-Omaha. And she currently has served on the Omaha Chapter of the Hearing Loss Association, acting as vice president for two years and the advisory board for a research student regarding the outcomes for children with hearing loss. I'd ask for your confirmation of the appointment of Diane Muelleman to the Commission for the Deaf and Hard of Hearing. Thank you, Mr. President.

SPEAKER FLOOD: Thank you, Senator Gay. Members, you've heard the opening on the Health and Human Services Committee confirmation report. There are no members wishing to speak. Senator Gay, you're recognized to close. Senator Gay waives his opportunity. The question before the body is, shall the Health and Human Services confirmation report be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please report.

CLERK: (Record vote, Legislative Journal page 1450.) 46 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

SPEAKER FLOOD: The confirmation report is adopted. Members, please proceed to your seats in preparation for Final Reading. All unauthorized personnel please leave the floor. We are on Final Reading. Thank you. Mr. Clerk, the first bill on Final Reading is LB999. [LB999]

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CLERK: (Read LB999 on Final Reading.) [LB999]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB999 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB999]

CLERK: (Record vote read, Legislative Journal pages 1450-1451.) 41 ayes, 6 nays, 2 present and not voting, Mr. President. [LB999]

SPEAKER FLOOD: LB999 passes with the emergency clause attached. Mr. Clerk, we now proceed to LB1020, where the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB999 LB1020]

CLERK: 44 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB1020]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB1020]

CLERK: (Read title of LB1020.) [LB1020]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1020 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1020]

CLERK: (Record vote read, Legislative Journal pages 1451-1452.) 49 ayes, 0 nays, Mr. President, on the passage of LB1020. [LB1020]

SPEAKER FLOOD: LB1020 passes. Mr. Clerk, LB1103. [LB1020 LB1103]

CLERK: (Read LB1103 on Final Reading.) [LB1103]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1103 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1103]

CLERK: (Record vote read, Legislative Journal pages 1452-1453.) 44 ayes, 5 nays on the passage of LB1103, Mr. President. [LB1103]

SPEAKER FLOOD: LB1103 passes. While the Legislature is in session and capable of transacting business I propose to sign and do hereby sign LB999, LB1020 and LB1103. Mr. Clerk, we now proceed to the next item on the agenda, LR452. [LB1103 LB999]

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LB1020 LR452]

CLERK: Mr. President, LR452 is a resolution introduced by Senator Mello and others. It was introduced on May 25 and laid over at that time. You may find it on page 1079 of the Journal. [LR452]

SPEAKER FLOOD: Senator Mello, you are recognized to open on LR452. [LR452]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. LR452 is a resolution that the Chairman of the Appropriations Committee asked me to introduce that would extend the Budget Reform Task Force that was passed last year in LR224, extend that task force through the remainder of this year to give the Legislature or the Appropriations Committee more time to work on producing a report for the Legislature. With that, I'd yield the remainder of my time to Senator Heidemann. [LR452 LR224]

SPEAKER FLOOD: Senator Heidemann, 9 minutes 30 seconds. [LR452]

SENATOR HEIDEMANN: Thank you, Speaker Flood and Senator Mello. LR452 was introduced last year and because of things that were going on last summer and the special session last fall, we weren't able to spend the amount of time on LR452 that we would have liked or that we needed to. And because of that, we need to extend how long the task force will continue to December 31, 2010. I agree with that. We met yesterday, actually, talking about how we want to proceed this summer. We have a meeting that we're trying to set up in June to start working on the Budget Reform Task Force. So with that, I urge your support of LR452. [LR452]

SPEAKER FLOOD: Thank you, Senator Heidemann. There are no lights on. Members, you've heard the opening. Seeing no lights on, Senator Mello waives his opportunity to close. Question before the body is, shall LR452 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LR452]

CLERK: 45 ayes, 0 nays, Mr. President, on the adoption of LR452. [LR452]

SPEAKER FLOOD: LR452 is adopted. Mr. Clerk, we now move to LR542. [LR452 LR542]

CLERK: LR542 is a resolution originally introduced by Senator Heidemann. It may be found on page 1277 of the Journal; introduced on April 1, at that time referred to the Executive Board for purposes of a public hearing. The board has reported the resolution back to the Legislature for further consideration, Mr. President. [LR542]

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SENATOR STUTHMAN: Thank you, Mr. Clerk. Senator Heidemann, you are recognized to open on LR542. [LR542]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. I bring to you LR542. As we was into special session last year because of budgetary problems and as we came into this year realizing the challenges that we had before us finishing out this fiscal year and next fiscal year in this biennium budget and then looking to the out-year, I will say in my six years as a legislator I have never had heard of such talk and concern about what was going to happen in the out-year. If you would turn to your green financial sheet right now, as of today I don't expect it to change a lot. There might be a few bills that tweak it a little bit but not much. We're showing a shortfall of \$679,455,662. There is a bright side to that. We still have \$321 million back in the cash reserve. But realizing that we can't utilize all that, you would want to leave a little bit of that behind, we are still going to see a significant shortfall in the out-years. Because of that and in conversations that I've had with senators and people in the Fiscal Office, we thought it would be prudent and wise to start on this problem sooner rather than later. And that's what LR542 proposes to do. Pretty much briefly and to get down to the bare bones of it, it would be our proposal that we're going to start working on the budget deficit of the next biennium this summer already. We normally don't start on that process until next January, the beginning of the biennium budget. Looking at the challenges before us, we're convinced that we can't wait that long. This legislative resolution will get an ad hoc committee together, which is pretty much will be the chairs of each and every committee. And from that, though, it is our intention to have those committees over the interim, through the summer and the fall, to the agencies under their jurisdiction to look at those agencies and to see where we can maybe gain some efficiencies to do things just a little bit better and where we can maybe, because of those efficiencies, save some money to help us out with our budget deficit. We're not asking you, and I'm going to definitely put this down that we're not asking you to build a budget. We're asking you to come up with ideas, realizing that eventually that even anything that we do as we look at the challenges before us that there might have to be programs that are eliminated, we can't do that in Appropriations. There will have to be enacting legislation if a program is going to be eliminated, if it's in statute, and that would be in your jurisdiction, each and every committee's jurisdiction, depending on what you're talking about. So eventually the committees would have to be involved anyway. And because of that, we think it's wise to get the committees involved sooner, not only for the fact that you will, I mean, it will be coming to you eventually with the enacting legislation. But there are certain, I will say, looking at Senator Langemeier right now, DEQ would be underneath his jurisdiction. We, in Appropriations, do know the ins and outs of DEQ, but we would hope the expertise would be with Senator Langemeier and the Natural Resources Committee. And we can go through that committee after committee and agency after agency. We deal with every agency if they have any budgetary things before them, we deal with that in Appropriations; but the expertise

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probably isn't with us. So with that, we're trying to get the committees involved a little bit earlier in the process, seeing what they can do to help us out. And if there's a program or if there's something that needs enacting legislation, it would be our intent that they have that up and running by the first of January so that we can get started early on that process. With that, I realize this is a little bit more of a complex legislative resolution than we normally have. I'm sure there are some questions. I see some lights on. I encourage that. This is definitely something that as it unfolds it's...we're going to have to see how it works and how people want to get involved in. Hopefully people will get involved. I...looking at Senator Adams right now, I know that he will definitely be a player in this, and he will have to be a player in this, and he definitely is going to have to be a player to make things work in the out-years. So with that, if there are questions, I'll try to answer them and see what we can do. With that, I do urge your support, though, of LR542. [LR542]

SENATOR STUTHMAN: Thank you, Senator Heidemann, for your opening on LR542. Those senators wishing to speak: Senator Flood, Adams, Wightman, Hansen, Sullivan, and Mello. Speaker Flood, you are recognized. [LR542]

SPEAKER FLOOD: Thank you, Mr. President, and good morning, members. When Senator Heidemann approached me with a draft of what is now LR542, I didn't immediately say yes because I had a lot of questions. And I would imagine there will be some questions. I just want everybody to know what we're getting into here, and I am 100 percent supportive of it. But we're looking at a \$677 million budget shortfall in the next biennium. And I'm almost sure that when all of us ran for office we said we were going to find efficiencies in state government. If this is passed, and I hope it does pass, every committee chair in the Legislature will begin a series of meetings to start talking about what the time line is and how this is going to roll out. But this is designed so that every member of every standing committee has a substantive role in finding those efficiencies. We look forward to a good partnership with the executive branch as they prepare for what is the Governor's budget next January. But at the end of the day, we have to make some pretty tough decisions next year. And if we're not willing to do this, the other side of the balance sheet is raising taxes. And I haven't run into anybody in here that has any interest in raising taxes today. But what I do know is this process will serve us well. And you might say, well, why doesn't the Appropriations Committee just do it? Folks, we've cut so much in state government the last couple of years we have to talk about eliminating programs. We have to talk about vertical cuts that will eliminate services that people right now enjoy in the state of Nebraska. And that's going to require more than an Appropriations Committee action on the floor. It's going to require changing statutes and authority. And if we're willing to go down that path, and my assumption is that we realize how sobering of a moment this is, we have to prepare ourselves for a summer to look at agencies that receive General Funds. It's easy to say, well, I want to eliminate this program or that program, but you got to drill down and find out are those General Funds, are those federal funds, these are questions, are these

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Cash Funds. These are questions the Appropriations Committee knows and asks and answers every year. But for the rest of us, especially those on standing committees and members of committees, we have to start asking those questions in our subject area of jurisdiction. The other part of LR542 that Senator Heidemann had included when he showed it to me was an expectation and a respectful request to the executive branch that in the event they proposed any reductions, for instance, to TEEOSA, they also supply the Legislature with a copy...with enacting legislation that would be introduced to make those reductions. We have a partnership with the executive branch. We look forward to continuing that, but we are fully engaged and will be making some very big decisions. And so when you vote for this, this isn't a resolution in the line of what we usually see. This is setting up a process that's going to require every one of us to look at in-depth the agencies that receive state General Funds and make decisions and prioritize. And so I just want to make that clear. And I recognize...I didn't ask to be the coordinator of the ad hoc group to bring the committee chairs together, but I'm happy to do it as long as I know this resolution has every single member's support. And if it doesn't have your support today, I hope to earn that or get it over the summer because you're going to have to sit on a committee and make some very difficult decisions. With that, I urge adoption of LR542 and thank you, Senator Heidemann and the Appropriations Committee, for their leadership. Thank you. [LR542]

SENATOR STUTHMAN: Thank you, Senator Flood. Senator Adams, you are recognized. [LR542]

SENATOR ADAMS: Thank you, Mr. President, members. As I reviewed the resolution, my first reaction was we're going to spend all summer looking at community colleges and reviewing state aid. Now we're going to be looking at educational lands and funds, Postsecondary Coordinating Commission, ESUs, and the list goes on. I think that's our responsibility. It's our responsibility. And I want to take this opportunity really to do two things. One, I want to talk about TEEOSA for just a second at this point, and then I want to ask Senator Heidemann a question about this. If you have superintendents that are wondering, well, how much are you going to cut? When are you going to cut it? How are you going to do it? We don't know; we don't know; we don't know. What I can tell you is this: We have already begun to talk about it within staff about what we think we can do. My state aid review committee is already scheduled to come in to Lincoln the end of this month and begin to go over some models of what we might do. But for me to stand here at this very, very premature point and tell you that you can walk back to all 253 of your school districts and tell them, this is how much we're going to cut and this is how we're going to do it, we don't know yet. We don't know, but we have begun the work. Now that's TEEOSA, and that's a huge chunk of that budget, as you all know. I think it's healthy. Will it be burdensome? Yes. But I think it will be healthy for us as an Education Committee to sit down with the entities that are under our jurisdiction and say, what's your organizational structure, what's your programming, what's your budget, what programs work, what ones don't? We may walk away from this not being able to hand

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the body anything. But at minimum I think we will have come away as an Education Committee with a better understanding of those entities that are under our jurisdiction. So I'll be supportive of the resolution. Now if Senator Heidemann would yield to a question. [LR542]

SENATOR STUTHMAN: Senator Heidemann, will you yield to a question from Senator Adams? [LR542]

SENATOR HEIDEMANN: Yes. [LR542]

SENATOR ADAMS: Senator, there are two things, and you and I have kind of discussed this off the mike, that I'd like you to respond to. First of all, the time line on this. LB935, I believe it was, an Appropriations bill that we have already passed, put in a time line for agencies to develop review plans with possible consolidation, and I don't recall all of the language that's there, and then the regular September 15 budget submittal deadline. I guess my question is twofold in light of that: (A) What kind of work product would you expect from us as committees in contrast to the product that you will be receiving from the agencies on September 1 and September 15? And what kind of a time line would you see us as a committee providing information? [LR542 LB935]

SENATOR HEIDEMANN: Well, LB935 deals more with the agencies and what we expect of them. I will say that normally in the budgeting process they have to do some of the things that we require of them underneath LB935 anyway; that we have a 95-5 modification budget process. I think they're always after trying to figure out how they can do things better. But this kind of encourages it probably to a greater extent. That's what we expect of them. You know, but what we can't expect from, I want to say the Education Committee, Education Department, we know that we're going to probably have a different state aid formula next year. They can't do that. [LR542 LB935]

SENATOR STUTHMAN: One minute. [LR542]

SENATOR HEIDEMANN: This is one of the things and one of the reasons why we thought we needed this legislative resolution, why we needed this process is to get you involved sooner. You know, as far as time line, wouldn't it be great if you could have it done by the first of January and introduce the legislation to redo the state aid formula to reflect the amount of money that we have? You're good. I don't know if you're quite that good. But it would be good. But least we're going to get a head start on the process, knowing that we have to do it. [LR542]

SENATOR ADAMS: Thank you, Mr. President. Thank you, Senator Heidemann. [LR542]

SENATOR STUTHMAN: Thank you, Senator Adams and Senator Heidemann. Senator

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Wightman, you're recognized. [LR542]

SENATOR WIGHTMAN: Thank you, Mr. President and colleagues. I do rise in strong support of LR542 and want to thank Senator Heidemann for bringing this resolution. I think it is very important. I think that we're entering pretty much uncharted waters. Of course, I don't date back as far as the Legislature even at my age so I'm not sure whether it's totally uncharted. But when we're looking at a potential shortfall for the next biennium of \$679 million and we have projections in there of 7.2 percent revenue growth for each of the two years of the biennium, it certainly is a major problem and one that we need to get an early start on. So I think it is important that we do get an early start. And certainly the Appropriations Committee does need the expertise of the committee chairs and the committee members who are more familiar with the priorities within the agencies over which they have jurisdiction. And I think we will be relying heavily upon that expertise and the reports that come from the various committees. As the Speaker has suggested and Senator Heidemann, likewise, has suggested, we probably will be looking at cutting programs or eliminating programs. And when we look at that, I think we need more help than just members of the Appropriations Committee in evaluating these programs. And so I do hope that everyone will look favorably upon LR542 and vote in favor of that. Thank you, Mr. President. [LR542]

SENATOR STUTHMAN: Thank you, Senator Wightman. Senator Hansen, you're recognized. [LR542]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I, too, rise in support of LR542. The members that aren't familiar with this concept just remember that it is a seed. And when Speaker Flood talked about the first time he heard this he wasn't sure he bought into it right off the bat. And that's what you need to do is think about this a little bit and, unfortunately, we're not going to talk about this all day. But this is a concept that was brought up in Appropriations, it was brought up on the floor at a couple of different times. We've talked about doing this, spreading the responsibility through the standing committees. And I agree with Senator Heidemann that this is the best way to do it. Would Senator Heidemann yield to a couple of questions? [LR542]

SENATOR STUTHMAN: Senator Heidemann, would you yield to a couple of questions from Senator Hansen? [LR542]

SENATOR HEIDEMANN: Yes. [LR542]

SENATOR HANSEN: Senator Heidemann, thank you. In your resolution on...right under the "Now, therefore, be it resolved" part, the Executive Council, the Speaker, the standing...the committee chairmen, and then on the last page, even the Governor has a role in this resolution. So everybody is going to have to buy into this, and I agree that they should. I just have one question about the cash-funded agencies, and we talked

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about them after our special session last year especially. How do you foresee the cash-funded agencies, the strictly cash-funded agencies that actually do the job of government but they do it through fines...fees and fines and assessments, how do you see their role in this scheme of things when we turned this over to all the standing committees? [LR542]

SENATOR HEIDEMANN: I'm not saying that there can't be some effort in looking into the cash-funded agencies. I'm thinking about the Department of Roads being one, and that's just a little bit different than the cash-funded agencies probably that you're thinking of. [LR542]

SENATOR HANSEN: Yeah, yeah. [LR542]

SENATOR HEIDEMANN: Looking at the problem we have before us, though, it is a General Fund problem. And it would be my intent that we focused on those General Fund agencies or even agencies that are partly generally...general funded and focus on them. And if certain committees think they have enough time and want to put enough effort into looking at some cash-funded agencies, I'm not going to be...I wouldn't stand here and say, no, that's not part of the resolution. But I think we need to focus on general funded agencies. [LR542]

SENATOR HANSEN: And I agree. And ones that are cash funded and general funded, cash funded and federally funded, cash funding and whatever, but the ones that are strictly cash funded, those are the ones I'm concerned about because they're the ones that are doing part of the job of government and they're doing it while being self-funded. And they're self-funded from cash in their own industry to go back to have...they do have state employees for sure. They have a cash account, but still it's all of the funds that are generated from that industry to regulate that industry as a part of government. And those are the ones I would like to see protected at least to some point. They can certainly...I think it would be fine if these cash-funded agencies were spread out among the standing committees. But just to realize that those people in those industries do fund those agencies. That's my only point. Thank you, Senator Heidemann. If you want to respond, that's fine. Thank you, Mr. President. [LR542]

SENATOR STUTHMAN: Thank you, Senator Hansen and Senator Heidemann. Senator Sullivan, you are recognized. [LR542]

SENATOR SULLIVAN: Thank you, Mr. President and members of the body. You know, last week we passed legislation, LB1048, the wind energy bill, that was labeled as landmark legislation that has...will ultimately produce great things for the state. It occurs to me that what we may be looking at here is potentially landmark decisions with respect to how state government operates. And so I think this is very important. I rise in support of the legislation...the resolution, but also I'm trying to figure out just some of the

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logistics of it. So I wondered if Senator Heidemann would yield for some questions. [LR542 LB1048]

SENATOR STUTHMAN: Senator Heidemann, would you yield to some questions from Senator Sullivan? [LR542]

SENATOR HEIDEMANN: Yes. [LR542]

SENATOR SULLIVAN: Thank you, Senator. I'm a visual person so I'm trying to picture a flow chart on how this is working. The ad hoc committee comes together that includes the standing committee chairs, then they're sort of given their marching orders, if you will, to go back to their respective committees and start these discussions. Is that correct? [LR542]

SENATOR HEIDEMANN: Somewhat, yes. [LR542]

SENATOR SULLIVAN: And then do you envision the results of their discussion coming back to the ad hoc committee or is the result proposed legislation or what happens with their deliberations? [LR542]

SENATOR HEIDEMANN: You know, it probably depends a little bit on what the ad hoc committee thinks is best. I will say once again that this is a work in progress. It's an idea that, first of all, we came up with and then we wanted to put before the Legislature as a whole to see what they thought. But it is a work in progress. I would have to, you know, we'd have to have a discussion in the ad hoc committee about how they would want to go about it once the committees got their work done. [LR542]

SENATOR SULLIVAN: There's also a lot of moving parts in this whole thing because we talked about the Budget Reform Task Force that you're currently meeting right now. We have the legislative Planning Committee. Do you see that they're all sort of interrelated? [LR542]

SENATOR HEIDEMANN: They are a little bit. The Planning Committee probably not quite so much because it's a longer range, a broader view than what we are doing in this LR and somewhat with the Budget Reform Task Force. The Budget Reform Task Force tends to be a little bit longer view also. [LR542]

SENATOR SULLIVAN: Do you anticipate in the early stages of this resolution and how it's going to play out, is the public going to be involved at all? [LR542]

SENATOR HEIDEMANN: That's something that the ad hoc committee could probably discuss a little bit more at length if we're going to have public hearings on this or not. I will say that once our decisions are made and if programs are to be cut or agencies are

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to be cut, we always, because this is how we do things in Nebraska, we have public hearings. There will be nothing that we decide on that will not have a public hearing. Because as we go into session next year, each and every idea will have to have a bill behind it and then that will get a public hearing. [LR542]

SENATOR SULLIVAN: You indicated that in your six-year tenure thus far this is the largest deficit you've had to grapple with. But is this the largest deficit that this state has faced thus far? [LR542]

SENATOR HEIDEMANN: And this is from memory from talking to Tom Bergquist earlier on this session, he's been around a long time, and at least in modern history that we know of, I believe it's even greater than what we faced in the 1980s, and the 1980s were a very difficult decade for the state. [LR542]

SENATOR SULLIVAN: Getting back to my initial comments, do you personally anticipate that there, as a result of the discussions in these committees that you're proposing, do you think there will be fundamental changes in the way state government operates? [LR542]

SENATOR HEIDEMANN: Yes. I actually think that there are differences already because of the across-the-board cuts that we had in the special session and doing more, a 2 percent across-the-board... [LR542]

SENATOR STUTHMAN: One minute. [LR542]

SENATOR HEIDEMANN: ...in this session, I think you're starting to see, if you haven't seen them, you will see them shortly already. [LR542]

SENATOR SULLIVAN: I appreciate your comments, Senator Heidemann. We may be entering uncharted territory in this resolution, but I think it's necessary territory that we enter into and it's part of our responsibility as state lawmakers. So I, again, rise in strong support of this resolution. Thank you. [LR542]

SENATOR STUTHMAN: Thank you, Senator Sullivan and Senator Heidemann. Senator Mello, you're recognized. [LR542]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I, too, as an Appropriations Committee member, rise today in support of LR542 and particularly like to thank my good friend and colleague, Senator Heidemann, for bringing this framework forward because it's what Senator Flood had mentioned. This is an opportunity to involve all 49 senators in the budgeting process. I know in talking with members when I first came to the Legislature, there seems to be a stigma that's associated with the Appropriations Committee, that we are kind of locked to ourselves,

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we're in a room by ourselves, we operate away from everyone else and the budget is essentially created and you see us all come out hand in hand and that's the way it works. I think what LR542 is intending to do is to broaden that perspective, to broaden the scope of every member in this body to be able to have a voice in regards to looking at state agencies and the budgets that they produce, not only to the Appropriations Committee and the Governor, but ultimately through the whole process itself. So with that, I really am thankful for Senator Heidemann for bringing this forward. I do have a couple of questions for him, though, if he would yield to them. [LR542]

SENATOR STUTHMAN: Senator Heidemann, would you yield to a couple of questions? [LR542]

SENATOR HEIDEMANN: Yes, I would try. [LR542]

SENATOR MELLO: (Laugh) Senator Heidemann, I think part of my first question was already discussed, but I want to just make sure that it's fairly crystal-clear to the members of the body. While the resolution only calls for general-funded agencies to be evaluated, would it be your perspective as the chairman of the Appropriations Committee to encourage all the committees to evaluate all the agencies, regardless if they're cash-funded and/or a hybrid of both cash and federal-funded agencies? [LR542]

SENATOR HEIDEMANN: I think we should do that every biennium actually and not just when you're in budgetary problems. There are some cash-funded agencies that will probably get a little bit more scrutiny than others. I mean I'm thinking of Department of Roads being one is mainly a cash-funded agency. I think we have...I think they do a very good job, but that doesn't mean that the Legislature can't keep an eye on what they're doing. [LR542]

SENATOR MELLO: I would agree with you on that. And so just for the record, that's something that you would encourage these committees to do is to evaluate all the agencies that fall under their parameter, not just general-funded agencies, even though it's only listed in the resolution, general funded only. [LR542]

SENATOR HEIDEMANN: We want their focus to be on the general-funded agencies because that's what we're going to have to do to cut this deficit. But if they have enough time and they want to put the effort toward it, yes, that would be fine. [LR542]

SENATOR MELLO: My second question falls along the lines where I think you and Senator Adams were going with the second question is the communication and the transparency that comes from LR542, has there been discussions at least between yourself and the Speaker of doing some kind of monthly report to the Legislature as a whole to producing some kind of documents after every hearing that a committee does on an agency so that the public at large can read it? Has there been any conversations

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about what Senator Adams asked was a work product? We go through all of these hearings, we gather this data. What actual work product are you looking for encouraging committees to produce to the Legislature and to the public at large? [LR542]

SENATOR HEIDEMANN: You know, Senator Mello, and I've stated this before, this is a work in progress. A lot of it is going to be up to the ad hoc committee what...how things are going to unfold and what the final product will be. I, hopefully, will be in that process, heavily involved in that process. I mean, it's the thought by the time we get to December that we're going to be well down the road of figuring out what we're going to do. And... [LR542]

SENATOR STUTHMAN: One minute. [LR542]

SENATOR HEIDEMANN: ...you know, I...today I couldn't stand up and tell you how I want that to unfold, whether reports are going to have to be filed eventually, it would probably be closer to the fall, you know, November, December. The work is going to be done over the summer so I don't anticipate a lot of reports would be filed at that time. [LR542]

SENATOR MELLO: Okay. My last question deals more with kind of at least my understanding of how the interim study process works. For members who might sit on, for an example, the Judiciary Committee who has a strong interest in issues like education, will they be able to go to these agency hearings and participate in a similar way that we get to participate in various committee interim studies? So essentially anyone from any committee can go participate, upon the approval of the committee chairman, for that agency hearing? [LR542]

SENATOR STUTHMAN: Time. (Visitors introduced.) Those wishing to speak: Senators Pahls, Gay, Harms, Cornett, Gloor, and many others. Senator Pahls, you're recognized. [LR542]

SENATOR PAHLS: Thank you, Mr. President. I do appreciate what Senator Mello and Senator Hansen have stated about these cash agencies, funded agencies because I'm just going to give you a little bit of a story. As Chair of the Banking and Commerce and Insurance, I've noticed that we've been really willing to hit their cash funds. And typically the excess money does go into the General Fund, but we've hit them twice. It's really interesting how we will hit them and really hit them hard, but then we have a corn checkoff, which is I noticed another thing, man, that went down in flying colors. Well, I'm telling you right now the insurance, that comes from insurance agents. So if we have so much excess money in these funds, then maybe we are charging these agents too many or their fees are too high. So I think we ought to start taking a look at that because when you hear the word insurance and banking so many people automatically think, oh, these are the big shots or these are the people who did things to us at the federal level.

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If we are going to start digging into these cash funds, and I'm speaking to the groups that I'm in charge of as Chair, we need to take a look at that. It's too easy to say...because we did hit them twice, and everybody was sort of blase about it, and I did bring this up during the special session. So I think this will give us time to take a look at this. I'm not saying that we do not need to take a look at this excess, I'm using the word excess funds, but if we have so many dollars that we could rob, and I say millions of dollars, then that means we are charging these insurance agents, etcetera, too much money because we have over 30,000, 40,000 of them. We have as many of those as we do have people who farm. It's the power of the group that's backing some of these things. Because it's interesting how some of these can go down in flying colors and others we just sort of walk around and we just do our thing. So I'm encouraged by this. And again, Senator Hansen, I appreciate your concern about this and also Senator Mello at least bringing this up. We need to take a very serious look, I'm not saying we don't need to take a look at those funds, but if we do have such excess funds, then maybe we are charging...our fees and our licenses are way too high. I have not spoken to the Department of Insurance or the Department of Banking. This is all on my own. So they may be in disagreement with what I'm saying. But as the body, I think we ought to start taking a look at those because we do represent those people who do sell insurance and work in the banking industry for us. Thank you. [LR542]

SENATOR STUTHMAN: Thank you, Senator Pahls. Senator Gay, you're recognized. [LR542]

SENATOR GAY: Thank you, Mr. President. I rise also in support of the resolution and the discussions to get to this resolution. I thought it was important that the resolution also states that the ad hoc committee will collaborate with the Governor and the state agencies in determining the enabling legislation that may be necessary. That's a very crucial part as well. The Health Committee actually took some measures this session. We had not as many bills as usual sent to us so we had some hearings with each agency except for public health. We didn't get to that, but we discussed and asked them to prioritize their different programs they have. It was a little hard to get them to prioritize those because that is somewhat the purview of the Legislature if we create and we can also get rid of. So they're a little hesitant to give us guidance there, but they did a good job as far as coming before the whole committee. So we're a little bit ahead of the game. We need to get a lot more into this. Just for other senators, you know, I've got two days here on the floor, but the rest of the year to work and I'm excited to do this. I think it's a good cause and will get you started in a better direction next year if these cuts have to be made, which it looks like they will. But one thing just everyone should know, we're also having an interim study on the whole healthcare bill and how that will affect us costwise as well. That may cost us more money, but there also may be opportunities there to do some matches. But I think all our committee members, I don't want to speak for everybody I guess, but we've gone through this and I think it's a good idea. The one thing, though, is the Health Care Cash Fund has also been...we're having

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an interim study on that, and that is a large amount of funds that have been dedicated to other things. And we briefly discussed it during the session, took a little bit of that money for that lead program for Senator Council and Senator Krist. But there are large amounts of money there. And the idea of that review is to make sure that that money is still a priority, that those programs...we take that money is still a state priority. So I think as we look at things...I just wanted to get on the record and let...this is truly for the public as well that they know that we will be looking at the healthcare cash fund and reevaluating priorities there. I think that's only right since I don't think anybody in this Legislature probably was around when that was created, let alone knows where all that money goes. So we will be looking into that, and this is just a little bit I wanted to state that for others who may be listening and then be a little cautious on when we do our matches. We receive many matches from the government and our General Funds how we look at that. There are fewer General Funds in the Health and Human Services. But when I listened to Senator Adams, I thought I should get up as well because Health and Human Services is a tremendous amount of the budget, as you all know, but more than willing to help in the task. And I think it's a fine idea and look forward to supporting the resolution and working on the committee. Thank you, Mr. President. [LR542]

SENATOR STUTHMAN: Thank you, Senator Gay. Senator Harms, you're recognized. [LR542]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of legislative...well, it's easy for me to say, LR542. You know, I've been on the Appropriations Committee now for four years, and during those four years we've tackled some really difficult issues. And two years ago when we built the budget that we're in, we took out over \$300 million; this year maybe \$40 million or \$50 million. I'm here to tell you, colleagues, we're at the bottom now. There's no more room. And this is...what Senator Heidemann has done is absolutely great. He's a good leader. I've watched him over the four years take very diverse opinions, blend them together, and find a solution to the problem so I believe we're in really good hands here in regard to this issue. Bringing this to the standing committees is really critical for those who will still be on the Appropriations Committee because it can't be made just by the Appropriations Committee. We don't work with those organizations or those agencies, you know, on a regular basis. You are much more familiar with what they do or you're familiar with what is happening in those agencies. We are, too, but we don't work with them on a regular basis. And your help will be extremely important to what happens to Nebraska. And we're going to walk a pathway that it's been a long time that this state has walked. And I believe very strongly that we'll be a different looking government when we're done. We have no choice but to streamline what we're doing. We have no choice but to look at where the issues lie, and this is a good way to do it. It brings everyone together so when we come to the floor or when the Appropriations Committee comes to the floor with their budget, you've all had your input. You've been a part of this. There's no other way to do this, and I applaud Senator Heidemann again in his leadership and thinking ahead so

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that we have a summer between making the decisions and having to address what I think is coming, and that's going to be a redesign, a reengineer of government. So I rise in support of this, Mr. President, and I thank you. [LR542]

SENATOR STUTHMAN: Thank you, Senator Harms. Senator Cornett, you're recognized. [LR542]

SENATOR CORNETT: Thank you, Mr. President and members of the body. I rise in strong support of this legislative resolution. Everyone in here when they were running for office, like Senator Flood said, made a commitment to streamline government and not to raise taxes. This is your opportunity. This summer is going to be when those very tough decisions are going to be made. In the past, the Appropriations Committee brings us a budget and we vote on it. We are each being given the responsibility of finding savings and cutting the budget where it needs to be cut, and that's going to mean making very difficult decisions in regards to what programs are cut to be able to reach that \$650 million number. If we do not reach that number, that will mean a tax increase because we are required to have a balanced budget. So when you are sitting down in the meetings and you're thinking, well, I don't really want to cut this program, you're going to have to weigh do you want to cut or do you want to raise taxes? And I know for one, as Chair of Revenue, I do not want to bring a bill to this floor. So I'm asking you to make those very difficult, difficult decisions this summer. Thank you. [LR542]

SENATOR STUTHMAN: Thank you, Senator Cornett. Senator Gloor, you're recognized. [LR542]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. I also rise in support of LR542. It was the same when I was still involved in business, managing a business that anyone could say yes all the time; anyone could say no all the time. But the challenge was to be discerning and to know when to say yes and when to say no. Certainly the best managers that I ran into had that ability. I think the same is true of senators, although when I ran a business the best managers had to say no a lot and were very discerning in saying yes. Since I've been down here, we say a lot of yes and are more discerning when we say no. And I don't mean that as a criticism. Not all of our bills and all the things we're asked to do involve dollars and cents, and it is appropriate, I think, that we say yes. But we're obviously getting to that point in time when our need to say no is becoming overwhelming. I need to point out that I had objections when we went into this current budget with across-the-board cuts because across-the-board cuts penalize everybody equally. There are programs that probably shouldn't be cut and programs that should be cut more, and it seems to me we are finally getting to the point where we recognize that and understand that that's where the discernment in our case comes in--the yeses and the nos. We are now finally getting to the point where we should have been, I believe, a couple of years ago--furloughs, short-term solution; 2 percent, 2.5 percent reductions, short-term solution. We now have a unique opportunity

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in the recent history of this state of making cuts that I think will have long-term ramifications. It will be important that we be careful because those long-term ramifications can have positive budget impacts. At the same time, they can also have very negative impacts when it comes to services. So this is an extremely important task. And I certainly, in my role serving on committees, will be glad to roll up my sleeve and get involved in helping to make some of those decisions. How much time do I have left, Mr. President? [LR542]

SENATOR STUTHMAN: 2:49. [LR542]

SENATOR GLOOR: I would also like to speak to Senator Mello's comment about the stigma of being on the Appropriations Committee. That stigma, of course, is well earned. We know that buried within the confines of their meeting room, long hours of the day, five days a week, sometimes weekends, well into the evening that they become introverts and nerds to a certain extent. That's the stigma that we talk about with the Appropriations Committee. Some perfectly good extroverts went into the Appropriations Committee and lost their social graces on behalf of the state of Nebraska and this august body. So I want to offer my appreciation and positive thoughts towards members of the Appropriations Committee for that very sad personality sacrifice they have made on behalf of this body. Hats off to them. I'm sure that there are recovery opportunities when the day comes when they remove themselves from that committee. Thank you, Mr. President. [LR542]

SENATOR STUTHMAN: Thank you, Senator Gloor. Those wishing to be recognized are Senators Krist, Carlson, Dierks, Howard, Dubas, Haar, Lathrop, and Langemeier. Senator Krist, you're recognized. [LR542]

SENATOR KRIST: Thank you, Mr. President, colleagues. Today, although it's the middle of the day, this is LR542 is the siren in the night. It is calling everyone to arms. It is calling everyone to notice that when we say we're cutting something 2.5 percent across the board, and I've said this before, there are no sacred cows. There have been many comments made that we are at the bottom of the barrel. We don't have very much to cut. I would say to you as a person who has spent his life thinking outside the box, that's not true. What we're arguing here is whether the structure, whether government can be changed. As Senator Dierks said many times on the mike in the past session, can we change due to the challenges that we have ahead of us and stay away from the status quo? I have couple of points to make on that particular item. The first is we have to think outside the box. We have to look at every one of those items and this LR542, thanks to Senator Heidemann, and I echo Senator Flood's comments, LR542 gives us the option to do that. Senator Sullivan said, what is the chronology? The chronology is if it works, we're going to do it. And it's going to take time and effort. And to that point I would say if you have questions, you need answers to those questions now. No staff agency, no directorate, no branch of this government should be exempt from giving this

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body these individuals the questions that they need now to try to find the answers to difficult questions in the next couple of years. And, again, LR542 gives us the vehicle to do that. There is no area that should be exempt. There is no agency that should be exempt. There is no institution in this state that should be exempt as we work our way through this crisis, no entity. Let me suggest something completely out of the box and I've suggested it on the mike before and I will reemphasize it again: We are in the middle of a census. When the census comes back, we'll have to redistrict. When we redistrict, we'll have to draw new lines. What better time than now as a legislative body to say, we can do this with 47 the way we currently do it with 49? A little out of the box? I don't think so. I think it's the right time. The stars line up that way. It will be something that I certainly will look at. Thank you, Senator Heidemann, for LR542. Thanks for the opportunities to work out our problems before they become larger issues. This is not a new challenge for this Legislature. Bodies past have cut \$800 million out of a budget. We can handle this. Thank you. [LR542]

SENATOR STUTHMAN: Thank you, Senator Krist. (Visitors introduced.) Senator Carlson, you're recognized. [LR542]

SENATOR CARLSON: Mr. President and members of the Legislature, I've heard a lot of good comments and times on the mike this morning that people have taken their turn. I am going to respond a little bit to something that Senator Sullivan said and then Senator Krist as well. And Senator Krist really had me with him until he talked about 47 versus 49 and so that's where we part ways. But it's thinking outside the box. Senator Sullivan referred to what might happen here as perhaps landmark legislation. And I prefer to think of it in terms of landmark housecleaning, landmark get the house in order, landmark streamlining. She also talked about fundamental changes, and those may be appropriate. I think that I have detected an attitude throughout the body of a premise of change without tax increases, and I hope that continues in that fashion because throwing money at a challenge doesn't necessarily solve the problem. But I want to spend a little bit of time talking about logistics and procedure and organization. What we're talking about here in my mind, first of all, I thought fits a special session but it doesn't, because a special session is called by a two-thirds majority vote of the Legislature and then we have specific bills to deal with, and we deal with those and then the session is over. And that's not going to fit what we're talking about here. But the scheduling of it I think could be very similar. Most of us serve on two, three, or four or more committees. And I think for many of us, the schedules for the summer and fall are already filling up. They certainly are for me. And I know that in approaching this problem that most committee chairs will do some work with their own committee staffs and do some preparations and then following that, bring in the members of the committee for their input and approaching this challenge. But I think it would be appropriate if we took a week out of the late summer, Monday through Friday, convene on Monday morning at 8:00 for the committees that meet on Monday. And one study session, one meeting be from 8:00 to 12:00 Monday morning, a second one be from 1:00 to 5:00 Monday

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afternoon. At 5:30, we all go play golf. On Tuesdays, the committees that meet on Tuesday should meet, again, 8:00, 1:00. That gives opportunity for those of us that...another committee is meeting while ours meets, we have a chance to get in on another session. Wednesday, same thing--committees that meet on Wednesday. Thursday should be a day where those committees meet that don't have a regular meeting schedule. And Friday could be a meeting here in the Chamber for a summary from each committee on what's been accomplished that week. But I think most of us are concerned about how our schedules are filling up. I think to get us all together would be very appropriate. I think it would be an opportunity for some real progress on these issues. All state agencies would be on notice. They'll know when this is going to occur, and they'll know there's going to be some work to be done prior to that meeting. [LR542]

SENATOR STUTHMAN: One minute. [LR542]

SENATOR CARLSON: But this would be the way that I would like to see us proceed. I asked Senator Heidemann if he would listen and I would ask if he would yield. [LR542]

SENATOR STUTHMAN: Senator Heidemann, would you yield? [LR542]

SENATOR HEIDEMANN: Yes. [LR542]

SENATOR CARLSON: Senator Heidemann, is that a possibility? Does that have merit what I've talked about? [LR542]

SENATOR HEIDEMANN: I actually think it's a very interesting proposal. I will say that we will have an ad hoc committee, and the way I understand it, you will sit on that ad hoc committee, and I would urge you and hopefully you will bring this proposal to the ad hoc committee and see what the ad hoc committee thinks. [LR542]

SENATOR CARLSON: Okay, thank you, Senator Heidemann. And, again, because of the schedules, I think the sooner the better. So thank you, Mr. President. [LR542]

SENATOR STUTHMAN: Thank you, Senator Carlson. Speaker Flood for an announcement. [LR542]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members, a quick note on today. We will break at noon for lunch and return at 1:30. Again, we will break today at noon for lunch and return at 1:30 and finish up our agenda. Tomorrow we will start at 1:30 p.m. We will start with any override motions filed by bill introducers that have received a veto. And then we will take up some remaining resolutions. We will have a visit from the Governor and a farewell address by several of our members who will be leaving the Legislature at the end of this year. That is the schedule. Again, breaking at noon for lunch today, returning at 1:30, and then tomorrow going into session at 1:30

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p.m. Thank you, Mr. President.

SENATOR STUTHMAN: Thank you, Speaker Flood. Senator Dierks, you're recognized. [LR542]

SENATOR DIERKS: Thank you, Mr. President and members. I, too, stand in support of LR542. It's been a long time coming, but it's been needed a long time as well. I made a remark in here the other day about starting from scratch and I had this in mind. And one of the reporters got ahold of me afterwards and he said, well, define "scratch" for me. I said that's when you start a new program and you start from the ground up. You decide what you need and you look for where you're going to get the funding to fund it. That's kind of what you're asking us to do. The Revenue Committee took a tour across Nebraska last fall, and we talked about property taxes, sales taxes mostly, some income tax things over at Bellevue. But everyplace we went the property tax issue was in our face. And I reminded these people that the only way you reduce that property tax is by reducing the need or by doing a tax shift. And everybody knows we don't do tax shifts around here. So how do you reduce the need? Senator Adams, are you still here on the floor? Could I ask Senator Adams a question, please? [LR542]

SENATOR STUTHMAN: Senator Adams, will you respond to a question? [LR542]

SENATOR ADAMS: Yes, I will. [LR542]

SENATOR DIERKS: Senator Adams, as Chair of the Education Committee working on TEEOSA, you are more aware of the needs that go into the formation of the property tax than anybody else probably on this floor. How do we address the needs? How do we address the needs? Do we go to the Court of Industrial Relations and say, what are you doing? Are you helping us or hurting us? How do we do this? [LR542]

SENATOR ADAMS: You've raised a critical question because that's what this is really about. Before we ever look at the revenue side, it's the needs side. And within the formula, we'll try to address needs as we see them and reduce percentages and those kinds of things. But you still have to back up to where I think you're headed and that is separating the difference between a need and a want and making that judgment call. What's needed and what isn't? And I...we've tried very hard, I think, to spread the word over the last year and a half to school boards and teachers and everybody related to the education world that this biennium is going to be a tough one, be prepared for it and do the things you need to. And whether it's in cash reserve or retirement or hiring or collective bargaining, we've trusted the 253 school districts to adjust their needs so that it helps us at this end. [LR542]

SENATOR DIERKS: You know, of course, we're going through a lot of changes out there because we saw that with the need for unified school systems again. The

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numbers are dropping drastically so there's a lot of changes taking place out there in the country that are going to be affected by what we do here as well. So I think we've got a monumental task ahead of us with this LR542. And I thank you for your answers, Senator Adams. With that, I'll give the rest of my time to Senator Lathrop. [LR542]

SENATOR STUTHMAN: Senator Lathrop, you have 1 minute and 23 seconds. Thank you. Thank you, Senator Dierks. [LR542]

SENATOR LATHROP: Thank you, Senator Dierks, colleagues. I just want to stand up and be the guy that tempers the enthusiasm here just a bit. Only to suggest, I think, LR542 is very important to us as a warning to all of us that we have some budget problems coming up. We're not immune from the recession. We won't have the stimulus dollars that propped up our budget that we used in the last biennium and we will have some difficult decisions to make. The idea that our committees would get into their area of jurisdiction and look at the agencies is good. It's good so that we are educated as we approach the budget process so that we can participate in the budget process, have input in it. But I want to make sure that we don't get ahead of ourselves and fail to appreciate that ultimately it will be the executive branch that proposes a budget and the legislation necessary to make that budget a reality. I pledge, as Chair of the Business and Labor Committee, not only my support of LR542, but to participate in the process and do what I can. I just want to make sure that we appreciate as we talk about this subject that ultimately it is the executive branch that proposes a budget... [LR542]

SENATOR STUTHMAN: Time. [LR542]

SENATOR LATHROP: ...and the enabling legislation and it is our job then to review that in time and if we do that better educated about the agencies over which we have some connection through our committee work, all the better. But please understand... [LR542]

SENATOR STUTHMAN: Time. [LR542]

SENATOR LATHROP: Thank you. [LR542]

SENATOR STUTHMAN: Thank you, Senator Lathrop. Senator Howard, you're recognized. [LR542]

SENATOR HOWARD: Thank you, Mr. President and members of the body. And I thank Senator Heidemann for bringing us this opportunity. We all have our own expertise and I know we rely on one another for information and to address the problems that we're not as familiar with as those people who have in their past lives actually lived with these issues. One of my major concerns, and I had a conversation with Senator Heidemann on Friday, is where we're going with our child welfare contracts. And I'm sure that over the weekend you've had the opportunity to read in the newspaper, we are now down to

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two agencies in this part of the state, in Lincoln and in the Omaha area serving children who are still in...the agencies are still engaged with these contracts. We've lost CEDARS, we've lost Visinet, and to me this is concerning on so many levels. Number one, these contracts were only signed last November. These agencies have decided they can't afford to do this very, very quickly. When that happens, and especially when we lose what I would consider more the mom-and-pop agencies, our own state agencies, private agencies that would do this, we are opening the door for a very expensive proposition. I've had private agencies say to me over this period of time that their donors are not going to contribute to subsidize the state of Nebraska. They're not contributing to those agencies in order to make up for any shortfall that we have in dealing with state wards. Now that's understandable and I hope that we're able to not put them in that position. I think private agencies have worked hard to maintain their own role in providing for our children in the state of Nebraska and I don't want to see that compromised. I can remember when Senator Fulton brought a bill in a year ago to study this very issue. He asked...he felt this was something we should look at and he asked for a study, which we did. And at best that would have recommended a small pilot attempt with the privatization. And instead, without a bill advancing to this Legislature to look at the entire issue, the Department of Health and Human Services decided this was the way they were going to go. I can give you examples of things that have happened in other states. Foster care payments have decreased. There's been problems in terms of service to the children and the families. Permanency is delayed when agencies are put in the position that they can't afford to do this. I had a call from a guardian ad litem concerned about a situation of a youth and her younger brother who were placed in a foster care home and they didn't provide a bed for each one of those children. The 15-year-old girl and the 12-year-old boy were given a bed together, totally inappropriate, not acceptable, should not happen. An agency should know that. The goal was...the privatization goal was to reverse the percentage of children in out-of-home care. That's a good goal. Right now we have approximately 70 percent of our state wards in out-of-home care. That's foster care, that's facilities, group homes, treatment facilities. We have 30 percent of our state wards living with permanent families or families that are intended to be permanent whether it be their own biological family or an adoptive family. To reverse that, to have only 30 percent of our state wards in out-of-home care, good goal. I have no argument with that. But that takes a long time to accomplish and at the same time, more children will continue to come into our system and some of those placements back home... [LR542]

SENATOR STUTHMAN: One minute. [LR542]

SENATOR HOWARD: ...won't work. The state remains the ultimate responsible party. When shortcuts are attempted, whether by private providers or the state, this places a greater responsibility on our court systems and our guardian ad litem. I feel a responsibility to present my concerns, not only to Senator Heidemann but also to you, and to have these recorded in the record. Thank you. [LR542]

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SENATOR STUTHMAN: Thank you, Senator Howard. Senator Dubas, you're recognized. [LR542]

SENATOR DUBAS: Thank you, Mr. President. Good morning, colleagues. I know we're all standing and it's very apparent that there's pretty good broad-based support for this resolution, as there should be. But I also think this is a very important discussion that we're having. As state senators, our main priority, our main obligation is to establishing the budget for our state and I think with the advent of term limits and the extremely steep learning curve that we are all experiencing, that this type of response is appropriate to help us again understand better everything that's involved with the budget process as well as the work that the different agencies do. I totally rely on and respect the work that the Appropriations Committee does and in the past, that's the way it's operated. The Appropriations Committee does all the heavy lifting and spends all the time listening to the agencies. They work through the Governor's budget proposal and then they bring something to the floor for us to deliberate and that's who we ask our questions of. That's where we go to get our questions answered, so I don't think that this resolution is in any way an attempt to undermine the work that they do. I think it's an attempt for us as a full body to get much more engaged with the budget process and when the budget does come to the floor that we can have a much more engaging debate, questions, thoughtful ideas being put out there. We do control the purse strings. So when these agencies come to us with whatever it is that they're proposing, we need to be able to make an informed and an educated decision when we're talking about their particular budgets. I think it's important that we do have more interaction with our state agencies. We all...I mean, we're working together and we know the agencies that come before our various committees but we need to have a broad-based understanding of what the agencies do. I think it's been pointed out, I think Senator Gloor pointed this out that with every challenge comes an opportunity and I think this particular resolution gives us an incredible amount of opportunity to be much more constructive with the decisions we make rather than destructive. I mean, it's very, very easy to make the decision to just say across-the-board cuts. It's a little more difficult when you have to be discerning. And if we are going to be discerning, we have to have the facts to back up those decisions. And again, I think this process gives us that particular discernment to make those kinds of decisions. I don't think we should treat the legislative branch and the executive branch and the judicial branch...we shouldn't be adversaries. We're all in this together. We all need to be pulling the same direction because we all serve the same constituency. So I stand in strong support of LR542. I think it can complement our Planning Committee. I think they can benefit from the work that this legislative resolution committee will put together and the Planning Committee will be able to put some of the things that come up into their...to the work that they're doing. So I stand in strong support of the resolution. I think this is a very important discussion that we're having this morning and appreciate the comments of my colleagues. Thank you. [LR542]

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SENATOR STUTHMAN: Thank you, Senator Dubas. Senator Haar, you're recognized. [LR542]

SENATOR HAAR: Mr. President, members of the body, a couple of words have come up which I find interesting, landmark and outside the box, and I rise in support of LR542, of course. This is a landmark Legislature because we're the first ones where term limits have really taken effect. And frankly, many of us, I speak for myself, don't know what's going on inside the box. And I do hope that we will look at creative solutions. But we are in a position where many of us are anxious to learn more about state government. I think this is a good opportunity to get a broader, more in-depth view of state government. Because, again, as a freshman, I've been scrambling these first two years just to get up to speed on some issues I'd like to make a difference in and now we, perhaps, get the opportunity to look at state government in a broader way. So, again, I hope we are landmark in the decisions we make and we do need to think outside the box. And I also will take this as an opportunity to participate, to find out what's going on inside the box. Thank you very much. [LR542]

SENATOR STUTHMAN: Thank you, Senator Haar. Senator Langemeier, you're recognized. [LR542]

SENATOR LANGEMEIER: Mr. President and members of the body. I rise in support of LR542 and I look at this as an opportunity for myself and the committee to get to know the agencies that we typically seem to have relation with. And I'm preparing myself for a budget that's going to be proposed by the Governor next year that's going to have significant cuts. And I think as we start to look at our agencies and look at the programs that fall within those agencies, we're going to understand them better. We're going to be able to prioritize those better and we're going to be able to look at agency programs that may be obsolete or need to be off the books. We've had the opportunity to look at some of our agencies now. We think we've found some opportunities there now. But we're looking forward to that budget coming from the Governor. It's going to have some significant cuts to it. If we know our agencies better, I think we can better deal with comprehending where these budget cuts are going to come from. So with that, I rise in support of LR542 and thank Senator Heidemann for bringing the idea. Thank you. [LR542]

SENATOR STUTHMAN: Thank you, Senator Langemeier. Senator Hadley, you're recognized. [LR542]

SENATOR HADLEY: Mr. President and members of the body, this hasn't been done on this microphone this year but I'm going to do my best Senator Friend imitation, this lovefest has to stop right now, I...no, no, I'm kidding. (Laughter) I stand in support (laugh) of LR542. I think it's important. And I think it's important for an interesting different reason than I think most people have talked about, I don't think anybody has

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talked about it, is we now have term limits. And I think one of the things with term limits is that you see the power at times has shifted from the Unicameral to the agencies because the history, the knowledge, the background is there. We don't have the 15 to 20 year of experience that some of the senators used to have. So I think it's important that we set up a framework to be able to evaluate this. So even though I didn't do a very good job of my Mike Friend imitation, I do consider this a great lovefest and the love for Senator Heidemann's LR542 is overwhelming. Thank you, Mr. President. [LR542]

SENATOR STUTHMAN: Thank you, Senator Hadley. Senator Wallman, you're recognized. [LR542]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. I, too, stand in support of this, but cautiously as I look at these forms from TEEOSA funding in '91, '92, 14 percent. Before that it was 132 percent when it was implemented. So continually we've gone up except a few years was minus. In the one year here, was '99, '98, it went up 26.9 percent. So trust me, when we put guidelines for state schools, for public schools, whether it be testing, whether it be special ed, all these things were passed in this Legislature for local districts, local control to pay for. And whenever we pass these things it seems like there's never been 100 percent funding. So we have to be careful for our schools. One of my school districts is going to take a huge hit and that concerns me. And we can say we're not raising taxes in here. Folks, that's not true. We're raising your local property taxes if we don't find out ways to cut here. So thanks for your attention, Mr. President, that's all. [LR542]

SENATOR STUTHMAN: Thank you, Senator Wallman. Senator Lautenbaugh, you're recognized. [LR542]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I, too, rise in support of this resolution. I do want to underline that I did introduce a resolution as well that differs from this a little bit, and I would urge us to be mindful of the fact that, while it is important to look at what we do in state government and look for savings because we have to find them, my resolution focused at all levels of government, because it does no good to pass things down to the localities because that's property taxes, plain and simple. So while we're doing this and while we need to do this and while it is clearly the necessary and the right thing to do, I would like to point out that we should also focus on other branches of government, other levels of government down to the localities to make sure that we aren't mandating expensive, revenue-consuming, tax-consuming things being done at the local levels that they can't afford to do anymore than we can afford to do the things we've been doing the last few years. I do applaud Senator Heidemann for bringing this and I'll yield the rest of my time to him if he would like it. [LR542]

SENATOR STUTHMAN: Thank you, Senator Lautenbaugh. Senator Heidemann waives

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his opportunity to speak. Seeing no other lights, Senator Heidemann, you're recognized to close on LR542. [LR542]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I will have to say that this is probably the most discussion I've heard on an LR for quite a while but it's been a good discussion. In looking at the challenges and the difficulties we have before us, I think it was an important discussion. One thing I do want to say, Senator Mello was asking me a question earlier on and we got cut off. I want to answer that question. He talked about being able to be...every person in the Legislature being able to be involved in every committee's legislative studies. I would encourage that. I mean, you have to go to the chair and get that okay to do that but there's no reason that just because you sit on Natural Resources that if you have interest in things that are in Agriculture Committee that you can't get involved. I think I have actually have attended some Natural Resources legislative interim studies before. So talk to the chairman and I think you could get involved wherever you so desire. We do have some difficult times before us. This is an attempt through this legislative resolution to start a little bit early and to get a jump on the problem. I am confident that this body and that this state will do the right thing. We have shown responsibility time and time again and that's the reason that when we come out of this thing, and we will come out of this thing, that we're going to be able to move forward in a rapid fashion where a lot of other states that do not want to take on their problems and use gimmicks and smoke and mirrors. It will be years before they come out of this. So I urge you to support LR542. Not only that, get involved in the process here as we have before you and let's take this thing on and let's do the right and responsible thing. Thank you. [LR542]

SENATOR STUTHMAN: Thank you, Senator Heidemann. You have heard the closing on LR542. The question before the body is, shall LR542 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LR542]

CLERK: 46 ayes, 0 nays, Mr. President, on adoption of the resolution. [LR542]

SENATOR STUTHMAN: LR542 is adopted. Mr. Clerk. [LR542]

CLERK: Mr. President, LR273 was a resolution originally introduced by Senator Howard. Introduced on January 6 of this year, found on page 82 of the Legislative Journal. It was referred to the Government, Military and Veterans Affairs Committee for public hearing. That committee refers the resolution back to the Legislature for further consideration. [LR273]

SENATOR STUTHMAN: Thank you, Mr. Clerk. Senator Howard, you're recognized to open on LR273. [LR273]

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SENATOR HOWARD: Thank you, Mr. President and members of the body. Today I bring you LR273 for your consideration. LR273 was brought to me by constituents concerned with the treatment of the Ecumenical Patriarchate by the government of Turkey. This resolution would urge President Obama and Secretary of State Clinton to encourage Turkey to recognize the Ecumenical Patriarchate and to afford them the rights of a religious group...to afford them the rights other religious groups are given under Turkey's laws. Twenty-four states have adopted similar resolutions. Orthodox Christian communities have been part of this state for over 100 years and many of these maintain a direct ecclesiastical connection with the Ecumenical Patriarchate. The Patriarchate is the government of the Orthodox Greek Church and is headed by Patriarch Bartholomew. Although the majority of the faithful under this church government are located outside Turkey, the Patriarchate has been located there since the sixth century. Disputes between the Turkish government and the Orthodox Christian minority have been the subject of treaties and discussions among foreign powers for more than a century. However, in Turkey religious entities and personages must be granted official recognition by the government. The Turkish government has not given recognition to the Ecumenical Patriarchate. That means the Greek Orthodox Church is not allowed many privileges other faiths take for granted. It also means there's a very real chance that the church could disappear altogether. Turkish laws have been rewritten to require that only church officials who are Turkish citizens elect the Patriarchate. But most of the officials of the church are spread throughout the world. There are 15 hierarchs of Turkish descent within Turkey and 40 hierarchs throughout the world. According to Canon Law, all should be able to vote or be elected as Ecumenical Patriarchs. According to Turkish law, only the Turkish 15 have those rights. The government has seized the church's theological schools and will not allow it to hold property. Priests cannot be trained in Turkey and those seeking education elsewhere rarely return. Because of this, there are only two deacons and two priests in Turkey who can and will be allowed by the Turkish government to replace members of the church government. The church is also not allowed to own property or hire employees, especially foreigners. This makes admission of the church an extremely difficult task. Throughout the last century of the Turkish government has seized churches, monasteries, and even the church's historic orphanage. In total, the government has seized 75 percent of property belonging to the Greek Orthodox Church. Turkey has also passed laws and employs other severe restrictive practices to subjugate the Rome authority, the ethnic Greek Orthodox community of Constantinople. There are very real repercussions for Greek Orthodox Nebraskans. The government of their church cannot elect its leaders, hold property, or train clergy. Turkey's treatment of the church threatens its viability around the world. Many other states have passed resolutions like this one, as I mentioned earlier. Several of them are to be sent directly to the Turkish government officials in the United States. LR273 will instead be sent to President Obama, Secretary of State Clinton, and our congressional representatives. By passing this resolution, we remind our leaders that we value all of Nebraska's religious populations and ask them to urge Turkey to do the same. Thank you for your time and

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your consideration of LR273. [LR273]

SENATOR STUTHMAN: Thank you, Senator Howard. Senator Haar, you're recognized. [LR273]

SENATOR HAAR: Mr. Chairman and members of the body, again, I'm pretty new in this body and I'm unaware that we sort of pass resolutions in other, you know, human rights issues and religious issues around the world. I'd like to ask Senator Howard a couple questions. [LR273]

SENATOR STUTHMAN: Senator Howard, would you respond to a couple questions? [LR273]

SENATOR HOWARD: Yes. [LR273]

SENATOR HAAR: Is this the habit of the Legislature to get involved in issues going on in other countries? [LR273]

SENATOR HOWARD: Senator Haar, I can't tell you the particular habits of the Legislature. I've been here six years and we've dealt with many different issues. This resolution is merely to be sent to President Obama and Secretary of State to encourage Turkey to recognize this Ecumenical Patriarchate. [LR273]

SENATOR HAAR: Well, there are many other kinds of issues around the world wouldn't you...for example, the right of Buddhists to have their, you know, in Tibet and those kind of issues. Do you see that as appropriate for the Legislature as well, or...? [LR273]

SENATOR HOWARD: You know, I would say to you that if a senator has constituents who are of that faith and who have concerns, then it is certainly appropriate for those constituents to approach their senator and discuss that and have it addressed in any means that they choose. I would say this was advanced by committee and placed out here on the floor for us. [LR273]

SENATOR HAAR: Okay. Well, thank you. [LR273]

SENATOR HOWARD: Thank you. [LR273]

SENATOR STUTHMAN: Thank you, Senator Haar. Senator White, you're recognized. [LR273]

SENATOR WHITE: Thank you, Mr. President. This is in response to Senator Haar's query. This body was a leader in passing something called the MacBride principles, Senator, which directed investments away from Northern Ireland until such time as

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there was equality of religious treatment in the country. So there is a long tradition inside of this body to take an interest outside of the state in matters of human rights. So with that, I would just urge the body recognize Senator Howard is acting within the traditions of the body. Thank you, Mr. President. [LR273]

SENATOR STUTHMAN: Thank you, Senator White. Senator Howard, you're recognized to close on LR273. [LR273]

SENATOR HOWARD: Thank you. [LR273]

SENATOR STUTHMAN: Senator Howard waives closing. The question before the body is, shall LR273 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LR273]

CLERK: 34 ayes, 0 nays, Mr. President, on adoption of the resolution. [LR273]

SENATOR STUTHMAN: LR273 is adopted. Mr. Clerk for items. [LR273]

CLERK: Mr. President, Senator Gay offers LR568, an interim study resolution offered by the Health Committee; Senator Fulton, LR569; and Senator Rogert, LR570. Those two will be laid over. Reference report referring LR566 to the Revenue Committee. Bills read on final reading this morning were presented to the Governor at 10:35 a.m. (re LB999, LB1020, LB1103). I have transmitted to the Secretary of State LB1048A with the Governor's line-item reduction, Mr. President. An announcement: Judiciary will hold an Exec Session today at 12:15; Judiciary at 12:15 in their hearing room. (Legislative Journal pages 1453-1456.) [LR568 LR569 LR570 LB999 LB1020 LB1103 LB1048A]

And a priority motion, Senator Flood would move to recess the body until 1:30 p.m.

SENATOR STUTHMAN: Thank you, Mr. Clerk. The question before the body is, shall we recess until 1:30 this afternoon? All those in favor say aye. All opposed, no. We are in recess.

RECESS

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session of the fifty-ninth day is about to reconvene. Senators, please record your presence. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

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SENATOR CARLSON: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: I have nothing at this time, Mr. President.

SENATOR CARLSON: Thank you, Mr. Clerk. We'll proceed to the first item on this afternoon's agenda.

CLERK: Mr. President, LR411, offered by Senator Council, introduced on March 18 of this year, found on page 967 of the...or 969 of the Legislative Journal. The resolution was referred to the Judiciary Committee for purposes of a public hearing. That committee reports the resolution back to the floor for further consideration. [LR411]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Council, you're recognized to open on LR411. [LR411]

SENATOR COUNCIL: Yes, thank you, Mr. President. I do rise to offer for this body's consideration LR411. And I need to preface my statements by making the point that when LR411 was introduced it was my intent that it be introduced and considered by this body as a nonbinding resolution. And I know some may ask why a resolution on arson. Well, the reason that this resolution was introduced was due to my involvement with the national coalition against the death penalty. As some of you may know, the Texas arson murder case of Cameron Todd Willingham and Ernest Willis both demonstrate there is a scientifically valid and reliable method for determining whether a fire was intentionally set and what that means is whether the offense of arson was committed. And there are also invalid and unreliable ways of determining whether arson has been committed. This point was detailed in the Polk award-winning New Yorker article by David Grann, entitled "Trial by Fire." This article showed how the application of the scientific method to fire investigations produced valid and reliable arson findings and how unreliable the previously used methods of identifying arson were. While the article has earned great renown for establishing that there was no reliable evidence of arson in the case for which Cameron Todd Willingham was executed. There is another present-day fact that remains and must be addressed. In states across the nation, there are people presently serving time on arson convictions that may have been based on the now fully discredited traditional means of determining arson. In that regard, there are currently 26 persons serving time in Nebraska for arson, some of whom may have never abandoned their claim of innocence. What's more, it is not clear that every jurisdiction across the country is now using the scientifically valid method that is published by the National Fire Protection Agency, directive 921, despite it having been universally embraced as the standard of care in arson investigations. What this means is that to identify and prevent wrongful convictions in arson cases, each state in the nation must encourage legal review of past arson convictions where innocence was claimed and more importantly each state must review the current arson investigation practices being used in every jurisdiction in the state to ensure that only the reliable,

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scientific, and accepted form of fire investigation, which is NFPA 921, is being used to assess potential cases of arson. And it is for this reason that I introduced LR411. Again, its intent is solely to urge jurisdictions in the state of Nebraska to first review any cases where there was an arson conviction and there was a claim of innocence to make sure that the most scientifically valid means of investigating that fire were used and to ensure that all of our governmental agencies are in fact employing what has been universally recognized to be the most scientifically valid form of investigating and conducting fire investigations. As stated, LR411 was heard at the Judiciary Committee hearing. No one appeared either in support or in opposition of LR411. And I would urge this body's favorable consideration. Thank you. [LR411]

SENATOR CARLSON: Thank you, Senator Council. Members, you've heard the opening on LR411. Are there senators wishing to speak? Seeing none, Senator Council, you're recognized to close. Senator Council waives closing. The question is, shall LR411 be adopted? All those in favor vote yea; opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LR411]

CLERK: 38 ayes, 0 nays, Mr. President, on adoption of Senator Council's resolution. [LR411]

SENATOR CARLSON: LR411 is adopted. Mr. Clerk, next item. [LR411]

CLERK: Mr. President, LR538 is a resolution by Senator Pirsch. Introduced on March 29 of this year, at that time referred to the Government, Military and Veterans Affairs Committee. The resolution was reported back to the Legislature for further consideration. [LR538]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Pirsch, you're recognized to open on LR538. [LR538]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. This resolution is about ensuring fiscal responsibility and accountability. Over the past five years, the federal government increased spending by 42 percent to the highest level of spending as a share of the economy since World War II. The federal government has borrowed tremendous amounts of money to finance the skyrocketing spending and as a result the federal budget deficit has ballooned over the last five years from \$7.3 trillion to over \$12 trillion, a five year increase equal to the nation's entire accumulation of debt from the presidencies of George Washington to Bill Clinton. Further, the federal budget deficit has been projected to jump to \$17.5 trillion and some say even higher, perhaps \$18.5 trillion by 2019, just nine years from now. Practically every state in the Union has a balanced budget amendment in their constitution, which necessitates that annual appropriations be balanced with revenues. Currently, the federal government has no such requirement. LR538 reaffirms the Legislature's commitment to LR106, which was a

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resolution passed by the Unicameral in 1976, to seek a federal balanced budget amendment. In part, LR106 (sic) requests Congress to institute procedures to add a new article to the U.S. Constitution requiring a balanced budget. Alternatively, LR106 (sic) requests Congress to call a Constitutional Convention for the purpose of proposing an amendment to the U.S. Constitution requiring a balanced budget. LR106 (sic) also proposes that the legislatures of each of the states apply to Congress requesting that Congress either add a new balanced budget article to the constitution or require Congress to call a constitutional amendment (sic) for the purpose of proposing a balanced budget amendment. I thank you for your time and attention and would appreciate your vote. Thank you. [LR538]

SENATOR CARLSON: Thank you, Senator Pirsch. Members, you've heard the opening on LR538. The floor is now open for debate. Those wishing to speak: Senators Haar, White, and Avery. Senator Haar, you're recognized. [LR538]

SENATOR HAAR: Mr. President, members of the body, there are a couple of resolutions this afternoon and I'm...you know I could mince words but I believe they are frivolous. And so I'd like to ask Senator Pirsch a few questions. [LR538]

SENATOR CARLSON: Senator Pirsch, would you yield? [LR538]

SENATOR PIRSCH: Absolutely, thank you. [LR538]

SENATOR HAAR: Okay. Senator Pirsch, on page 3 of your resolution it says, "The Legislature remains committed to seeking a federal balanced budget." Does...are you calling still for an amendment to the U.S. Constitution or simply that they balance the budget? [LR538]

SENATOR PIRSCH: In this particular legislative resolution I am indicating that we remain...the exact words are "remaining committed to seeking a federally balanced budget." That's the exact language of the resolution. [LR538]

SENATOR HAAR: Right and I see that on the...but does that mean that...because the original resolution, in 1976, asked for an amendment to the U.S. Constitution. So it's not clear whether we're asking our members in the Congress and so on to start a federal amendment to the constitution or are we just saying, please balance the budget. [LR538]

SENATOR PIRSCH: Well, that's my intent, yes, is faithful to the '76 resolution which is why I included it there, that we are indicating our resolution, our...are rededicating ourselves to that resolution which we passed in '76 calling for Congress to take action that results in a balanced budget amendment. [LR538]

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SENATOR HAAR: Okay. Just for information, because I've been watching the federal budget for many, many years. And when we passed the original resolution or we didn't, the Legislature at that time, in LR106, President Ford was president, followed by President Carter, President Reagan, Bush, Clinton who actually had a balanced budget, and then Bush, the son Bush, all of these did not balance the budget. And I don't disagree with the idea that we ought to have a federal balanced budget. But what effect do you think this resolution really has? [LR538]

SENATOR PIRSCH: Well, I tell you, the challenge has proven mighty insofar as this has been identified, over 35 years ago, as a key, critical, crucial threat to our nation. And it is properly addressed by this body. We are in a federal type of government and we don't operate in a vacuum. One is related and tied to the other. What effect would this have? I would hope that this would raise the level of the I call it a threat to the very foundation of our country by our...by the...our fiscal outlook right now as a result of not having a balanced budget. We have...so what would...effect would this have? I suppose we could all sit back and do nothing. But my, you know, if that...if this doesn't occur and other states don't also take action and we just hope for the best, then I can assure you what the outcome will be and it won't be good. So if, you know, my kind of philosophy is it seems clear to me that if you want things to change for the better you have to be prepared to get directly involved yourself. And that's what this hope is. [LR538]

SENATOR CARLSON: One minute. [LR538]

SENATOR PIRSCH: At some point in time we'll reach that critical threshold where it will become crystal clear to...if we can't effectuate our states...reach the 43 state...I'm sorry, 34 states because the constitution lays out a process where if a enough of us states bring it...we can bring it to a Constitutional Convention. But, hopefully, before then it will become clear to Congress that this is a pressing concern that are on the minds of the people of the United States. So that's the reason that it's being brought forward. I don't think it's trivial, in my estimation, at all. I think it's extremely urgent. [LR538]

SENATOR HAAR: Okay. And trivial, I guess I don't mean it's... [LR538]

SENATOR PIRSCH: Oh sure. [LR538]

SENATOR HAAR: Not sure what word to use but of really having some effect. But I'd like to continue the conversation in my next time up. Thank you. [LR538]

SENATOR CARLSON: Thank you, Senator Haar and Senator Pirsch. Senator White, you're recognized. [LR538]

SENATOR WHITE: Thank you, Mr. President. This is a very serious issue. It is more than just economics. I don't know how many remember that this winter a really

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earthshaking movement was made and then abandoned by China. China literally started talking seriously about finding a different reserve currency, that the dollar was no longer to be trusted because of our inability to control federal spending. I cannot tell you how much that would change the world within which we live. The fact that the dollar is the reserve currency has given immeasurable power and strength to the United States to peacefully persuade countries. It has allowed our citizens a standard of living sometimes beyond our productivity. It has helped stabilize economies across the world and has brought measures of peace to areas that would not have seen it. The major currency that is the rival of the dollar at this moment, the Euro, is under assault because Greece has a fiscal crisis in which they no longer can service their debt without loans from Germany and France. It is essential for the safety and long-term prosperity of this country that we do in fact control spending and that once again, as in the Clinton years, the budgets are balanced and we begin to pay down the national debt. That is a matter of essential national security. But beyond that, it is a matter of just ordinary respect for the generations that follow us. We, in fact, are mining the economic well-being left to us by our parents and we will leave a shell of a country for our children unless we turn this around. Now I would point out one last thing. President Eisenhower, President Kennedy, President Clinton, they all believed deeply that it is a matter of fundamental integrity to have a balanced or near balanced budget. That is what we need to return to if we are to regain the respect of our citizens for the political process. So I believe that Senator Pirsch is actually doing something of grave importance. We are one of 50 states, the original sponsors of this country, the states. And we are asking the federal government to please address a matter of deepest concern for all of us. Thank you, Mr. President. [LR538]

SENATOR CARLSON: Thank you, Senator White. Senator Avery, you are recognized. [LR538]

SENATOR AVERY: Thank you, Mr. President. I would like to start by asking Senator Pirsch one question. [LR538]

SENATOR CARLSON: Senator Pirsch, would you yield? [LR538]

SENATOR PIRSCH: Was that the question? (Laughter) I would. [LR538]

SENATOR CARLSON: I believe Senator Pirsch yielded, Senator Avery. [LR538]

SENATOR PIRSCH: I do yield, yes. [LR538]

SENATOR AVERY: Thank you, Senator Pirsch. I wondered if...this is kind of a variation of the question Senator Haar asked you earlier. But is this a specific formal petition to the U.S. Congress for a constitutional amendment or is this a nonbinding resolution? That's an important distinction. [LR538]

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SENATOR PIRSCH: Well, I thank you for that question. And, I guess, the answer is it depends upon who you ask in terms of the effect of this. I would treat this certainly as if this does have a binding effect, that this does have power as opposed to symbolic, that this is a reaffirmation. [LR538]

SENATOR AVERY: Okay. [LR538]

SENATOR PIRSCH: Sure. But there...I have been made aware of at least one constitutional law scholar in the state who argues, and I don't know what the basis is for their argument, that at some point in time, after a number of years have passed actions...proposed amendments to the constitution by states, may wear off the legal effect, in which case this would, in my estimation, be more than just symbolic but actually reaffirming it, if that holds sway. I think that probably the more, what...well, there's also another view which is accepted, I think, widely which is that these stay in effect regardless of the amount of time that passes unless repealed. Otherwise, there would be no reason to ever repeal amendments such as these. And they have been in other states, so. [LR538]

SENATOR AVERY: Thank you. Thank you, Senator Pirsch. The reason I asked that question is that if this is a formal petition to the U.S. Congress then we join a group of states, not yet enough, group of states calling for a Constitutional Convention for the purpose of voting on a constitutional amendment to balance the budget. And that's a whole lot different than a nonbinding resolution and a lot more dangerous because what...let me say in your defense that this...you've identified the right problem. No doubt in anybody's mind that we are on a current course that is unsustainable, no doubt about it. But what I worry about is that this may not be the right solution. Most economists would argue that sound fiscal policy for this state and perhaps most states around the world deflects the ability to have some deficit spending in times of recession, such as the present time. The implication of a petition in...for a yearly balance, and that's what a...probably a constitutional amendment would give us and that is a yearly...a requirement for a yearly balance. Economists do not advise this. Instead they argue that if you're going to have a balanced budget, it should be balanced over the entire business cycle. Running a deficit when the cycle is in the downslope and then balancing the budget or having a surplus in the upslope and averaging it out over that cycle that makes a lot more sense than an arbitrary... [LR538]

SENATOR CARLSON: One minute. [LR538]

SENATOR AVERY: ...requirement that you have a balanced budget on a yearly basis. Keep in mind that we have in fact always run a national debt, except for a very brief period during the presidency of Andrew Jackson. What I would argue is that the solution is not to take the approach of the butcher, that is the meat ax, but instead to move away

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from arbitrariness and use the prudent approach of the surgeon, that is the surgeon that carefully excises, molds, and shapes. It seems to me that's a bit more nuanced but it is a much rational policy and might actually lead to more reasonable and effective fiscal policy. I'm not sure how I'm going to vote on this. I did vote it out of committee but I just wanted to raise some of those issues. [LR538]

SENATOR CARLSON: Time. [LR538]

SENATOR AVERY: Thank you, Mr. President. [LR538]

SENATOR CARLSON: Thank you, Senator Avery and Senator Pirsch. (Visitors introduced.) Senators still wishing to speak on LR538 include Wightman, Wallman, Council, Pirsch, and others. Senator Wightman, you're recognized. [LR538]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I have spoken a number of times on this floor about the fact that I believe that the national debt may be only the second leading problem we have with regard to our national government. And I've talked about the fact that unfunded obligations primarily for Social Security, Medicare, employee benefits, federal employee benefits, I've seen numerous figures on it, \$63 billion to \$65 billion I was seeing a year ago. A recent Newsweek article placed those unfunded obligations at \$100...maybe I said billion, I'm sorry I blew up, \$104 trillion compared to about \$15 trillion or \$16 trillion of national debt. Now as I understand that what the unfunded obligations are, are benefits that have already been earned in the way of Social Security, Medicare, pensions and probably obligations to continue to pay health insurance for federal employees. And if that's \$104 trillion, and I don't...I'll engage in some questions with Senator Pirsch in a minute. But if that's the unfunded obligations, that's about six or seven times, I think, what the national debt that we're talking about and are concerned. And I'm concerned about the national debt as well. But, I guess, I would like to see a congressman or a senator who seems to have the nerve to stand up and tell the public that there are only two things that we can do to fund these obligations. That's (1), either increase taxes to fund those obligations; or (2), reduce benefits. And I haven't seen any of them willing to do that or at least not in any number. They come as single spies, that's somewhat of a Shakespearean quote. With that, if Senator Pirsch would engage in some questions and answers, I would like to visit with him. [LR538]

SENATOR CARLSON: Senator Pirsch, would you yield? [LR538]

SENATOR PIRSCH: I would. [LR538]

SENATOR WIGHTMAN: Now Senator Pirsch, what did you give the national debt figure at, at the present time, \$14 trillion, is that about it? [LR538]

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SENATOR PIRSCH: Well, I think it's, according to statistics I've seen, it was somewhere over...close to \$13 trillion. [LR538]

SENATOR WIGHTMAN: And is that the amount that actually we're in debt for or what our debt ceiling is? We pass a debt ceiling every so often that gives us the authority to continue to incur debt up to that ceiling. [LR538]

SENATOR PIRSCH: Right. They bump that up from time to time, I think by large increments but not, certainly not by \$13 trillion at one time. [LR538]

SENATOR WIGHTMAN: No, I understand that. What's your concern and would you resolution cover the unfunded obligations, which I also consider part of our national debt. [LR538]

SENATOR PIRSCH: I do as well. I think the long and the short of it is this, we're reaping the benefit...we're spending beyond our means now. And the long and the short of it is it's not just our kids, but our kids' kids and our kids' kids kids, in perpetuity maybe will be the ones who will be faced paying this debt off. It will...the bill is going to come. These...but we're taking...spending beyond our means right now. But we'll be long gone when the lasting effects of the bill comes due. [LR538]

SENATOR WIGHTMAN: And just looking at Senator Nordquist's machine right now, and he's brought up \$12,841,707,585,253, and I assume this will change even as I speak here. [LR538]

SENATOR PIRSCH: I think you forgot the 12 cents on top. [LR538]

SENATOR WIGHTMAN: (Laugh) I've forgotten 12 cents. But I am more concerned about the unfunded obligations which nobody even seems willing to talk about, first of all,... [LR538]

SENATOR CARLSON: One minute. [LR538]

SENATOR WIGHTMAN: ...because I think that it means that someone is going to have to take steps in our federal government to address that issue either in the form of reduced benefits or increased taxes, which I haven't seen anybody willing to do. So I do want to point out that the \$12,841 trillion is probably not the biggest problem we have. Thank you, Senator Pirsch. Thank you, Mr. President. [LR538]

SENATOR CARLSON: Thank you, Senator Wightman and Senator Pirsch. Senator Wallman, you're recognized. [LR538]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Would Senator

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Krist yield to a question? [LR538]

SENATOR CARLSON: Senator Krist, would you yield? [LR538]

SENATOR KRIST: Absolutely. [LR538]

SENATOR WALLMAN: Thank you, Senator. Does this concern you about funding our military when we send our military to engage in battle overseas in dangerous situations, for equipment needs? How can we proceed or how can we even know what that's going to cost? What do you think? [LR538]

SENATOR KRIST: I think the Department of Defense does a very accurate job of projecting their budget needs. And I think the budget process at the federal level attacks almost every line-item to try to hold the line down. I think we saw as a result of Gramm-Rudman, several years ago, an incredible cut in our military, probably too much. It is a concern. And when we talk about social services as opposed to our military those debates, I'm sure, are happening even today. But I think, again, its focus on the absolute needs of the country at any given time. Are we doing everything we can to hold the line down on the budget at all levels? No, I think we talked this morning about those kind of issues and, quite frankly, thinking outside the box and getting things done. But every President will set priorities, every Secretary of Defense will set priorities. And I think their budget process is much more intricate than we give them credit for nationally. I think they're doing a great job. [LR538]

SENATOR WALLMAN: Thank you, Senator. I, too, agree we have to be careful here. It's a feel-good legislation. I think they should balance the budget. But how can we when they have unforeseen obligations and military expenses? It's a lot different than running a state. And we have state national guard, I mean National Guard, paid for by national, our government. And we have entitlements that come to Nebraska from the national government. So I'll see how I'm going to vote on this. Thank you, Mr. President. [LR538]

SENATOR CARLSON: Thank you, Senator Wallman and Senator Krist. Senator Council, you're recognized. [LR538]

SENATOR COUNCIL: Yes, thank you, Mr. President. A couple of the people who have spoken before me have addressed at least one of my concerns about LR538 and that is what is the actual intent. I read LR538 the same as I think Senator Haar reads it and I think Senator Avery as well because it's not clear whether we're asking that this be viewed as a petition to the federal government to call a Constitutional Convention, which I'm not supportive of, or if it's just merely a nonbinding statement that we'd like to see the federal government balance the budget. And even in that regard, clearly others have alluded to the problems and difficulties inherent in achieving that. I was going to ask Senator Pirsch if he would yield to a question. [LR538]

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SENATOR CARLSON: Senator Pirsch, would you yield? [LR538]

SENATOR PIRSCH: I would. [LR538]

SENATOR COUNCIL: And when you, in the resolution, speak to a balanced federal budget, what is your understanding of what the federal budget is comprised of? [LR538]

SENATOR PIRSCH: Well, is your question designed to get at those things that Senator Wightman talked about, the entitlement programs? [LR538]

SENATOR COUNCIL: Well, that in addition to what other expenditures of the federal government do you understand to be...would be included in that which this resolution seeks to have balanced? [LR538]

SENATOR PIRSCH: The totality of the outlays of revenues. [LR538]

SENATOR COUNCIL: Okay. Well, and that's another cause for concern because my understanding of way the federal budget is developed, there are certain outlays of revenue that by virtue of the importance of those outlays aren't included in what's defined as the budget. Those outlays fall outside of budget parameters. I don't know how the federal government is expected to predict how many natural disasters occur in every year. But we certainly have every expectation that the government comes to the aid of states when we have flooding, when we have tornados, when we have hurricanes. Those are outlays that contribute to the national debt, yet aren't necessarily included in the budget. Senator Wallman asked Senator Krist questions about the military. Now I'm sure, and I'll ask another question of Senator Pirsch, if he would yield. [LR538]

SENATOR PIRSCH: I would. [LR538]

SENATOR COUNCIL: Of the approximate \$13 trillion deficit that you've referred to, does that include amounts associated with the defense of the country? [LR538]

SENATOR PIRSCH: Yes. [LR538]

SENATOR COUNCIL: So in terms of where we are in terms of balancing our budget and in terms of expenditures then it would be the intent of this resolution that in those times where we need to dispatch our military that at those times military expenditures, we would have to have adequate revenues in order to fund the military under that analysis. And, you know, I can think of no other time in this country's history where we've literally been at war in three different forums and certainly contribute to that \$13 trillion deficit. I, for one, don't want to be in a position of handicapping our federal

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government in its ability to respond to this country's defense as well as to respond to natural disasters... [LR538]

SENATOR CARLSON: One minute. [LR538]

SENATOR COUNCIL: ...that, I'm sure that the individual states don't have an expectation of. And certainly based upon their readiness to seek federal disaster relief we have to be very careful about what we ask for. Thank you. [LR538]

SENATOR CARLSON: Thank you, Senator Council and Senator Pirsch. Those still wishing to speak include Pirsch, Haar, Stuthman, and Avery. Senator Pirsch, you're recognized. [LR538]

SENATOR PIRSCH: Thank you very much, Mr. President, members of the body. I appreciate the comments. I should point out that encapsulated in the 1976 resolution that we would be adopting, and let me tell you this has been in effect in Nebraska. And again there is part of that, a clause, that says, "in the absence of a national emergency." So if there is something that is so perilous, so threatening, so unusual to the United States that you cannot reasonably, in an unusual occurrence, expect that you can't appropriate more, then there is that stopgap safety valve in there. But, look, I mean to take the argument there is uncertainty in budgeting and we have important things that are budgeted for on the federal level, and so you couldn't go down that paradigm, just doesn't pass muster, that argument. We operate and the other...virtually every state on the same principle. We cannot say that educational spending or university spending or Health and Human Services, which are so core and so basic, which we spend for by the state and have expenditures for, don't have unpredictabilities and uncertainties attached to them, unforeseen things. But yet we still have a balanced budget amendment. So you're left with a couple of choices there. Even if there's an absence of a national emergency you can either prioritize, look at other things and say are there wasteful areas that we can look at eliminating then because we don't want to touch these important...and that's the key to this really. That's what we have to do. That's what Nebraska families, that's what American families have to do is they earn a certain amount of income and they have a certain amount of revenue and they have to live within their means. So by necessity they have to prioritize their spending. Perhaps we can't take three vacations this year, maybe just one or two. And, you know, I don't mean to liken governmental spending exactly to family spending. But there are, I think everybody would admit, wasteful expenditures or at least...let's not say wasteful, but I think wasteful, but we'd all agree not as priority types of spending on some programs, on both the federal and the state level. And because we have this balanced budget amendment, yearly we are faced, we are introduced with that challenge of revealing what we're doing, does it make sense in light of today, today's needs and societal needs and prioritizing. And at the end of the day we cannot afford to keep going down the path that we've gone down on the federal level because it's unsustainable. At some point the

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house of cards will crumble. So we can either proactively do this in a reasonable, rational basis and proactively address and look at sustainability or we can just say, there's nothing we can do, put it off until tomorrow and don't worry about it. In which case, I assure you that will result in the worst possible outcome. The other thing we can do besides prioritizing, you know, if there was something that was so dire that the American people wanted to, you certainly...there's nothing that prohibits the increase of revenues through taxation. And I don't certainly...I don't support those. But there's...to say that there's an absolute ceiling on this is not true. There are always alternatives. This here is...plus, I think we're kind of counting our chickens before the eggs have hatched. This patch would just simply... [LR538]

SENATOR CARLSON: One minute. [LR538]

SENATOR PIRSCH: ...we would be required to be one of 34 states before such a convention was called. Long before that, I'm sure Congress would get the message that this needs to be addressed. They can help it, if they don't like the exact proposal or measure in which this is performed, let them come up with counter proposals. But until we do, I assure you that I don't think that I see the impetus, I don't see the effort that will be made to address this program that it is...I think we have to make it clear that this is a priority, that this is a concern of the American people and that was envisioned in the way we set up our constitution. So thank you. [LR538]

SENATOR CARLSON: Thank you, Senator Pirsch. Senator Haar, you're recognized. [LR538]

SENATOR HAAR: Mr. President, members of the body, okay, if you're actually talking about calling a Constitutional Convention it is not trivial. (Laugh) My reference was if we're simply, you know, writing a letter to Congress and saying, please balance the budget, I don't think that will do anything. You know, obviously this is not a partisan issue. Seven...of the seven last Presidents, there's only been one where we've had...where we've balanced the budget and that was for two out of the four years. The past President, before Obama, President Bush rolled up a deficit of \$3 trillion perhaps fighting a war where we just pretended we could fight a war and not have to pay any additional taxes for it. So if we're really talking about calling a Constitutional Convention, being one of the states to call for that, I think we better look at that really carefully. Because, as Senator Avery said, and I thank him for clarifying my opening comment, is this act, you know, what is the real purpose of this. I think we as a whole body really need to look at this very carefully and look at all the ramifications. Senator Wightman, I believe, is right that just the Social Security kinds of commitments for years and years to come would take up way more than balancing the federal budget. And so there are many implications of this. And it's not a bad idea to go forward but I think we better know what we're doing. The sheet I passed out that has a map of the United States, I would suggest, is a sort of thinking outside the box way that we could send a message.

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And as you notice, every state in red or the dark colored ones got more back from the federal government than they sent in tax dollars. And for Nebraska, and all this information, by the way, comes from the Tax Federation, which I put on the reverse side. And they're a nonprofit corporation, probably on the conservative side of things. So I wanted to tell you that I'm not just drawing this from a favorable source. The last year in which they published federal taxes paid versus federal spending received was 2005. And in that year Nebraska got \$1.10 in federal spending received per \$1.00 of tax paid. And we were right near the middle of the pack. We're 25th among states in getting back more money than we...we receive back more money in Nebraska than what we put out giving to the federal government. In fact, if you look at this, if you go out their Web site, the Tax Foundation, and look up Nebraska you can see this chart. And starting in 1983, yeah starting in 1983, ever year Nebraska has received more money back in federal spending than we put forward in tax dollars; 1981 and 1982 we actually put more money into the...paid more money into the federal government than we got back. So I'm saying if we're serious about this problem and we'd like to make some recommendations to the federal government, as we perhaps should, then one thinking outside the box would be in the next session that we decide that we're going to take no more federal dollars, we're going to take no more money from the federal government than we receive in tax dollars paid out. Because my guess is the \$1.10 that we receive back being...we got 10 cents per dollar more back from the federal government than we paid in federal taxes in 2005. [LR538]

SENATOR CARLSON: One minute. [LR538]

SENATOR HAAR: My guess is that part of that was the federal, you know, contributed to the federal deficit. So, again, I may vote for this because we'll probably get hammered if we don't vote for it in the next election and we all know that. But then I think we need to start looking at our state and the kind of money that we take from the federal government and not only send a message that they should balance the budget but that we will cooperate by taking no more money from the federal government than we give to the federal government. Thank you very much. [LR538]

SENATOR CARLSON: Thank you, Senator Haar. Senator Stuthman, you're recognized. [LR538]

SENATOR STUTHMAN: Question. [LR538]

SENATOR CARLSON: The question has been called. Do I see five hands? I do. Question is, shall debate cease? All those in favor vote yea; all opposed vote nay. Record, Mr. Clerk. [LR538]

CLERK: 29 ayes, 0 nays, Mr. President, to cease debate. [LR538]

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SENATOR CARLSON: Debate does cease. Senator Pirsch, you are recognized to close. [LR538]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. At some point in time it becomes clear that enough is enough. And if you want things to change for the better then you have to be willing to play a direct role in making the process better yourself. And I think that for the state of Nebraska, for we senators, this is a step towards that. This is not...this has nothing to do with a partisan thing, there's no talk of party here. There's plenty of blame over a large portion of time to go around. I don't think it's helpful at this point in time to kind of look backwards and focus on assigning that blame. I think what we need to do is to go forward and focus on what we can do at this point because we're all in the same boat together. This is, I think, an important step forward in calling attention to this very large, very grave, very longstanding problem that I think threatens our nation. And so, on that basis, I would ask for you to vote yes. Thank you. [LR538]

SENATOR CARLSON: Thank you, Senator Pirsch. Members, you've heard the closing on LR538. The question is, shall LR538 be adopted? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LR538]

CLERK: 39 ayes, 1 nay on adoption of the resolution. [LR538]

SENATOR CARLSON: LR538 is adopted. Mr. Clerk, next item. [LR538]

CLERK: Mr. President, the next resolution is LR539 by Senator Fulton, introduced on March 30 of this year, referred to the Government, Military and Veterans Affairs Committee. It was advanced to General or advanced to the Legislature for further consideration, Mr. President. [LR539]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Fulton, you're recognized to open on LR539. [LR539]

SENATOR FULTON: Thank you, Mr. President. Members of the body, I'll start by saying that LR539 actually was first introduced as LR292. And so if you're interested in seeing those who testified for and against, that was LR292. In order to accommodate the rules and with thanks to the Government, Military and Veterans Affairs Committee I did reintroduce this and they moved it forward and here we are today. When I first came to the Legislature, I, like many of you I'm sure, began receiving e-mails from folks who were concerned about this issue or that. At the time, I recall the issues most prevalent in my in-box had to do with No Child Left Behind and the Patriot Act. Lately, my in-box has been filled with concerns about the healthcare bills that have been passed by Congress. My initial reaction to all of this was that this is not my purview, I'm a state senator, I'm not a U.S. Senator, that is their sandbox, this is my sandbox, I should stay out. But at

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the same time, I have come to learn and appreciate the unique authority we senators enjoy by the volition of our constituents, the people of the state of Nebraska. Something has been occurring in states all across this country which I believe is legitimate and proper to our responsibilities as state senators. States are standing up to assert their unique rights as sovereign states. Last summer, after we finished our legislative session, I began to deliberate what should be on my agenda for the next session. I reviewed a number of e-mails and phone contacts that I had received from constituents and I decided at that time to both learn more about the Tenth Amendment and to bring this resolution. I've been educated and renewed as a state senator to see the meticulous ways our forefathers have set up our way of government to ensure the people maintain a control of their government through a balanced federalism. We senators are part of this great experiment in self-governance. And I don't just say this to provide rhetoric or words that are sweet to the ear, it's true. How privileged is each of us to be numbered among the very few leaders ever to have represented citizens in the state of Nebraska in this Legislature. Today I ask you to consider the words of LR539 and the rights and authority we exercise as state senators connected to our federal government certainly but sovereign by the protections of the Tenth Amendment to our constitution. We'll see what kind of debate we have on this resolution. I have crafted it such that it should be understandable by any and all who would read. It seems pretty straightforward. The language is there and I will gladly answer any questions that people have. I have taken great care to craft this so that it is construed with the words. This...I have been accused and asked if this is a partisan endeavor and, indeed, it is not. This has happened under many watches and if there is not one to stand up for states' rights other than state senators, I don't know who else could. So I'll ask for your favorable vote on LR539. Thank you, Mr. President. [LR539 LR292]

SENATOR CARLSON: Thank you, Senator Fulton. Members, you've heard the opening. The floor is open for debate. Those wishing to speak include Senators Krist, White, Avery, Karpisek, Council, and others. Senator Krist, you're recognized. [LR539]

SENATOR KRIST: Thank you, Mr. President, colleagues. I am on the Government, Veterans Affairs Committee. I heard the previous LR and then the changed LR under LR539 presented. I voted it out of committee both times enthusiastically. Most of you know I spent 21 years of my life defending the right of you...of all of us to do what the constitution allows us to do and exercise our freedoms. And you know that I am proud to be part of the One Hundred First Legislature, Second Session, as I've been appointed by the Governor. And I hope to be back here in January. And I solely agree, "heartfully" so with Senator Fulton when he says that if not a state senator to stand up for state rights, then who? There are men and women all over this country, all over this world that are serving you to maintain that constitutional freedom. There are politicians in our Capitol, in our national Capitol who seem to have forgotten that those rights afforded by the constitution allow each state, sovereign state, to deal with its citizenry and the rights and privileges afforded to it by the constitution and the constitution of the

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state. When you think about LR539, I want you to think about other states and how they have dealt with the sovereignty issue. I think this LR, this resolution is sensible, it's educated, and I thank Senator Fulton for bringing it forward. The debate, I'm sure, will be energizing. I just want you to remember at the end of the day what we're saying is in District 10, as in every other district in this state, you cannot continue to give me federal mandates, particularly unfunded federal mandates that will keep me, a state senator, us as this Legislature from balancing our budget. Constitutionally, some of those federal mandates will prohibit us in the next few years from balancing our budget. We need to stand up and clearly draw a line in the sand or the concrete or right outside this Capitol, whatever it takes to maintain the state sovereignty, otherwise we may not be able to fulfill our oath, our constitutional requirements within the state of Nebraska. Thank you, Senator Fulton, for bringing it forward. Thank you, colleagues, for listening. [LR539]

SENATOR CARLSON: Thank you, Senator Krist. Senator White, you're recognized. [LR539]

SENATOR WHITE: Thank you, Mr. President. I would like, for those that haven't gone through a class on constitutional theory, just to run through some basic principles and it might people focus their minds with regard to this resolution. I want you to understand the difference between the federal government and the states. Under the conception of the founding fathers, the states had all power. They could do anything without regard to any kind of a national conference or agreement. So all powers, were reserved to the states. After the Revolutionary War they formed the confederacy of the United States, the Confederate States of America, not to be...the confederacy is not to be confused with the subsequent Civil War. At that time they found that because there was not the ability to effectively govern, the individual states' liberties were threatened by outside forces, in other words, they could not afford to raise an army and pay for it or a navy and pay for it. They could also not communicate or conduct commerce efficiently between the states. So they called the Constitutional Convention. And this is the principle that I think everybody has to hold on in their mind to. The states had all power, all governmental power that was due and proper to them. And each state determined what they wanted to do with regard to that power. For example, some states functionally had a state religion, a religion in which it was permitted to be only an Anglican or a Puritan or a Catholic, in Rhode Island, or Pennsylvania which had none, it was dominantly Quaker. And they decided that the best way to try to balance these competing interests, some slaves, some free, was that they would create a national organization and give to it limited powers. They did that in the basic constitution. As they gave it powers, some of the founding fathers became concerned that the individual liberties might be perceived to have been given away to the federal government in their right to take them away. So the Bill of Rights was introduced. The Bill of Rights guarantees freedom of religion and no national religion shall be established, for example, the right of freedom of speech, not the right to bridge the press, in other words telling the federal government you can't...we gave you these powers but you can't use

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them for these purposes in the Bill of Rights. Then one of the founding fathers became deeply concerned that by enumerating rights, the right to bear arms, free speech, freedom of assembly, freedom of religion, that other rights that they didn't put on that laundry list might be assumed to have been given to the federal government with a power for it to legislate against them. It did not do that. They didn't like that. So the Tenth Amendment was then added. And the Tenth Amendment simply said, look, we're not going to knock down the individual liberties because we listed some of them, there are other liberties and those are reserved, and rights, and those are reserved to the states and the people respectively. Now it gets a little interesting because, for example, on the second...with regard to gun ownership in the Second Amendment, the way the original constitution was set up it said that the federal government cannot infringe on the right to bear arms with regard to a well-regulated militia, the federal government. But remember the states had all power. And the United States Constitution did not say a thing initially about controlling the states' power. So one of the questions I have and I'd ask Senator Fulton, probably not in this time but in the next time, to consider this. Right now there's a great... [LR539]

SENATOR CARLSON: One minute. [LR539]

SENATOR WHITE: ...constitutional debate going on. The United States Supreme Court said that Washington, the city of Washington, could not control the ownership of private handguns because it's an arm of the federal government. It is now examining the question of whether that Second Amendment right also constrains the states. So that a state, for example, might say, let's pick on Massachusetts, no one can own guns inside of Massachusetts, we are going to confiscate all guns in Massachusetts. And would they be free to do that? Or does the federal constitution somehow constrain now the state of Massachusetts from doing that? So one of the questions I have as we move forward on this, does the adoption of the pure Tenth Amendment say things, for example, that the states are absolutely free to outlaw the possession of firearms among other things because we have reserved, once again, we're restating all rights are reserved to the state? [LR539]

SENATOR CARLSON: Time. [LR539]

SENATOR WHITE: Thank you, Mr. President. [LR539]

SENATOR CARLSON: Thank you, Senator White. Senator Avery, you're recognized. [LR539]

SENATOR AVERY: Thank you, Mr. President. And thank you, Senator White, that was a pretty good overview of American history. This resolution, folks, is a very narrow, and I say very narrow, interpretation of the Ninth and Tenth Amendments. Basically, it says that the federal government's powers are limited to its enumerated powers. It's not in

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the constitution, you don't have that power. What it does, it completely ignores Article I, Section 8 of the constitution which is the necessary and proper clause. This clause gives Congress the power to make all laws that are necessary and proper to carry out its enumerated powers, that's important. It's sometimes referred to as the elastic clause. This was established firmly in our constitutional history by the Supreme Court ruling in McCullough v. Maryland, and the opinion was written by the distinguished Justice John Marshall. They ruled that Congress had the power to carry out or exercise powers not prohibited by the constitution, not prohibited to Congress by the constitution. The Antifederalists, back in the early days of our history, argued, during the ratification of the constitution, that the necessary and proper clause granted too much power to the Congress. The federalists, led by Alexander Hamilton, argued that this clause merely permitted Congress to execute powers already granted to it by the constitution. In fact, Madison, who would later turn against the necessary and proper clause, defended it back in those times, during the ratification, saying, whenever a general power to do a thing is given, every particular power for doing it is included. For example, the power to create the Federal Reserve Board is not expressly enumerated in the constitution. But the Chief Justice, that is John Marshall, argued that such powers were allowed in order for Congress to fulfill the expressed...their expressed powers of taxing and spending. Let me refer to the Ninth Amendment because I think we might lose sight of that in this discussion. The Ninth Amendment was included in the constitution to avoid a situation where the argument could be made that since some rights Congress was not free to violate, such as the Bill of Rights, then government might be free to violate any rights not specifically protected by the constitution. The Ninth Amendment was specifically designed to address this. Most justices believe today and have believed over time that the Ninth Amendment has binding authority and they use it to protect implicit rights hinted at but not enumerated elsewhere in the constitution, implicit rights, such as the right to privacy, it's not in the constitution, the right to travel, that's not in the constitution, and the right to the presumption of innocence which is not in the constitution. So let's be careful what we're talking about here now. The Tenth Amendment and the states' rights movement has to be put into historical context. I am sorry to bring it up, folks, but it has a murky history. Do you really want to be associated with arguments, such as states' rights, that have been used historically to say that it's okay to have slavery, to say that it's okay to suppress the freedom of speech of those who are opposed to slavery or its expansion. This Tenth Amendment was used for that purpose. It was also used to defend the right to violate the sovereignty of nonslave states by sending slave catchers... [LR539]

SENATOR CARLSON: One minute. [LR539]

SENATOR AVERY: ...into their territory to enforce the fugitive slave law of 1850. It's been used to deem portions of their populations as inferior and altogether unfit to associate with the white race. States' rights happen to be used historically as code words. And I could take you back to the civil rights movement of this country, when

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George Wallace said, segregation now, segregation forever. And then he said, oh, what I should have said was, not segregation but states' rights now, states' rights tomorrow, and states' rights forever, because for him and for many at that time they were the same thing. You can go back to John C. Calhoun, 1832, when he used states' rights to defend slavery. Jackson said, in answer to Calhoun, that the doctrine of states' rights is incompatible with... [LR539]

SENATOR CARLSON: Time. [LR539]

SENATOR AVERY: ...the existence of the Union. I'll be back, Mr. President. [LR539]

SENATOR CARLSON: Thank you, Senator Avery. Those still wishing to speak: Senators Karpisek, Council, Mello, Haar, Christensen, and others. Senator Karpisek, you're recognized. [LR539]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. We'll get away from a history lesson right now. But I'm going to try to give a little local control and private business and private control lesson. I think that this body, although I agree with this resolution, is being as hypocritical as we can be. What do we do in this Chamber every day but push laws down the throats of our local municipalities and our citizens. I don't see a lot of difference. In the short time that I have been here we've put in a smoking ban, we haven't lifted a helmet law, keno and bingo are okay gambling, but casinos are not okay because it depends where the money goes. If it goes to a charity it's okay or a fire department. If it might go to a local person it's not okay. What else do we do? We put on levy lids. I was a mayor for 12 years of a small town, big deal, I know. I was also a small business owner for 20 years. Again, big deal, I know. But I was there standing in those people's shoes and understand what happens every time you try to do anything and you have the state or the feds or someone coming in and breathing down your throat and knocking you back down. Do you think that the state doesn't pass on unfunded mandates? Sure, a lot of them may come down from the feds--standardized testing, and probably one that burns me the most of anything and I was in on this, we gave a \$400 million tax break for property taxes a few years ago. We still have at least 1,500 people on a developmentally disabled list waiting for help. We're in a dogfight over money this year. I think one of the first bills was, I don't know, \$7,500 and it got defeated because we can't spend any money. Folks, I'll tell you the next time any kind of a tax giveback comes up, I want to make darn sure that we're going to have money to do what we're supposed to be doing. I don't think that we can talk about this resolution without looking in the mirror. I think we do it every day. And I'm guilty just as much as the rest. I try not to be, but I think that we need to listen to the citizens, listen to what they say, what they're tired of. They're tired of property taxes, so am I, so are you, we all are. How do we do it differently? I don't know but I'll tell you what's going to happen in the next two years. We're going to cut spending for schools. What's that going to do to local property taxes? We're probably going to have to cut HHS money. What's that

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going to do to the people that can't help themselves? Again, I think this brings up a perfect point where we need to look at what we're doing, not worry about what the feds are doing all the time, not cry foul ball but try to keep ours in fair play, try to make this the best state that we can and I know that we do every day. We get lost in things in here. We get upset with each other, we get upset with the way that things go and we lose sight. I hope that we can reflect. Most of us will be back here again in a year or in January. I hope we can think about things... [LR539]

SENATOR CARLSON: One minute. [LR539]

SENATOR KARPISEK: ...to make the state better, to help our people, not shove some more things down but to listen. I appreciate being in this body. I think it's the best body in the nation for willingness to work together and for the loyalty and the truthfulness of the members. But not all is perfect either. Thank you for your time. Thank you, Mr. President. [LR539]

SENATOR CARLSON: Thank you, Senator Karpisek. Senator Council, you're recognized. [LR539]

SENATOR COUNCIL: Yes, thank you, Mr. President. I first want to acknowledge and express my appreciation for the statements made by my learned colleagues, Senator White and Senator Avery, because it's important to place this discussion in a historical context. And I first and foremost question the timing of this resolution. When I think about states' rights and the history of states' rights and the connotation connected with states' rights it causes me grave concern about the timing of this particular resolution. Perhaps it's coincidental that this resolution is being advanced at a time and point in our history where, when states' rights prevented African-American's from voting and having full participation in this country, this resolution is being introduced at a time in history where an African-American man holds the highest elective office. I hope that that's not at the core of this resolution. But I have a couple of questions, if Senator Fulton would yield. [LR539]

SENATOR CARLSON: Senator Fulton, would you yield? [LR539]

SENATOR FULTON: Yes. [LR539]

SENATOR COUNCIL: The third "whereas" paragraph of your resolution contains quoted material. It says in quotes, "To all objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people and the internal order, improvement, and prosperity of the state." From whence is that quote taken? [LR539]

SENATOR FULTON: The Federalist Papers, I believe. I think it was...the rendition that we were looking at, I think, it was paragraph 45. [LR539]

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SENATOR COUNCIL: And for the edification of us all, when were the Federalist Papers written? [LR539]

SENATOR FULTON: What year were they written? [LR539]

SENATOR COUNCIL: Yes. [LR539]

SENATOR FULTON: I couldn't tell you the precise year, I can get your close. [LR539]

SENATOR COUNCIL: Give me your best guess. [LR539]

SENATOR FULTON: Federalist Papers, probably it's in the late eighteenth century, so 17-something. I could find it for you, if that's pertinent to the record. If you want this entered into the record, I can find the (inaudible). [LR539]

SENATOR COUNCIL: It's very important to the discussion because we're talking about the United States Constitution and what the Ninth and Tenth Amendments of the constitution are intended to cover. And I assume by the inclusion of this quote, "to all the objects, which in the ordinary course of affairs, concerns the life, liberties, and properties of the people," that the intent of that language is to suggest that under your interpretation of the Ninth and Tenth Amendments to the constitution that the federal government has no right to legislate in any area concerning the lives, liberties, and properties of the people and the internal order, improvement, and prosperity of the state. Is that your intent, Senator Fulton? [LR539]

SENATOR FULTON: No, it's not, Senator. And we were specific to point out, on page 2 of the resolution, it is a balanced federalism. [LR539]

SENATOR COUNCIL: Okay, but your statement, your resolution begins that, "The framers of the United States Constitution envisioned a federal government with 'few and defined' delegated powers, whereby state governments retained 'numerous and indefinite' powers." That doesn't indicate a balance. [LR539]

SENATOR FULTON: It does when read in the context of this resolution. We quote the Ninth Amendment and the Tenth Amendment to the constitution, which encompasses both the state and federal powers, specifically in the Tenth Amendment. I'm trying to call to light the fact that these...that we tend... [LR539]

SENATOR CARLSON: One minute. [LR539]

SENATOR FULTON: ...we tend...I'm sorry, Senator, go ahead, it's your time. I can use my time. [LR539]

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SENATOR COUNCIL: Okay. And I'll come back on because I find it interesting. We talk about funded mandates, unfunded mandates. A mandate is a mandate and we only have a problem when we can classify it as an unfunded mandate. Quite frankly, if we want to take a logical argument about states' rights, earlier today we unanimously passed a bill, LB1020, that enabled this state to receive \$43 million in federal stimulus dollars. I didn't hear one person talk about what effect that would have on the deficit. I didn't hear one person stand up and testify what effect that that had on the states' rights with regard to dealing with matters of concern of the lives, liberties, and properties of the people. So, I guess, that fell into an acceptable mandate because it came with money attached. And we weren't concerned...I didn't hear one statement about... [LR539 LB1020]

SENATOR CARLSON: Time. [LR539]

SENATOR COUNCIL: ...the deficit. [LR539]

SENATOR CARLSON: Thank you, Senator Council and Senator Fulton. Senator Mello, you're recognized. [LR539]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. Obviously, with session winding down today it probably will be a very fruitful, I think, hopefully thoughtful debate on what we all see as our own interpretations of the constitution. And as I've jokingly had a conversation with Senator Fulton most of session regarding LR539, I do want to applaud him for bringing forth a resolution that deals with the Bill of Rights. I mean, as we were joking yesterday and in all jest, it's really nothing to joke about. The Bill of Rights is a very sacred document that guides an awful lot of what we do in our country and as well as what we do in our state. But my question to Senator Fulton was, why did we stop with just the Ninth and Tenth Amendments? Why didn't we include the whole Bill of Rights? Because we have numerous organizations particularly, as I joked, the ACLU who spends their time defending the Bill of Rights, all ten of the Bill of Rights actually, both the Ninth and the Tenth. So I stand actually in support of LR539 because the fact is there is not one person in this body who disagrees with the Bill of Rights. Because why? Because we all upheld an oath when we took office to serve the people of Nebraska and serve the United States Constitution as well as the state of Nebraska's Constitution. So with that, I applaud Senator Fulton for bringing forth a legislative resolution that talks about the importance of the Bill of Rights. But we're not going to just stop today with today's debate and conversation with just the Ninth and the Tenth. Why would we do that? We need to talk about the other eight important aspects of the Bill of Rights. Because why? Because they are just as important to the democracy of not only the state of Nebraska but our country. So what we're going to do a little bit, we're going to read through it. I know Senator White and Senator Avery gave very good explanations of some very basics of our American history and our American

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government. But for the record, I will read the remaining eight amendments to the constitution that constitute the Bill of Rights that are included also with Senator Fulton's Ninth and Tenth Amendment. The First Amendment, we all love that one, we all respect it. It is the guiding light for freedom in our democracy. What is that? Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press or the right of the people peacefully to assemble and to petition the government for a redress of grievances. Let that one sink in, colleagues. That is the First Amendment to the constitution. I wonder why they did that? The second one, a well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Very important amendment. We talk about that all the time in this body. We had actually a couple of bills, I believe. Senator Fulton, Senator Christensen dealt a lot with that Second Amendment so I'm glad that, once again, we decided to bypass that one, unfortunately for LR539. But nonetheless, there's still time for Senator Fulton, I think, to add an amendment possibly to incorporate that one. Article III, no soldier shall in times of peace be quartered in any house without the consent of the owner nor in a time of war but in a manner to be prescribed by law. Article IV, the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. And no warrant shall issue but upon probable cause to be searched in the persons or things to be seized. Article V, no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment, I'm sorry, or indictment of a grand jury, except in cases arising... [LR539]

SENATOR CARLSON: One minute. [LR539]

SENATOR MELLO: ...in a land or naval forces or in the militia when actual services in time of war, public danger, nor shall any person be subject to the same offense be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without compensation. I'm going to try to read the other two on my...I'll try to get more time to read the remaining three. But I think the point is this, I understand where Senator Fulton was coming with LR539 a long time ago. We can have a...I think we can have a thoughtful political debate in regards to the appropriate scope of our federal government in states' rights that fall within that balanced federalism. But as I described before, let's not cherry-pick constitutional amendments to make cheap political points because that is what we are doing on LR539. I will vote for it because I support the Bill... [LR539]

SENATOR CARLSON: Time. [LR539]

SENATOR MELLO: ...of Rights and the Ninth and Tenth Amendment. Thank you, Mr. President. [LR539]

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SENATOR CARLSON: Thank you, Senator Mello. Senator Haar, you're recognized. [LR539]

SENATOR HAAR: Mr. President, members of the body, I wish I could speak with as much passion as Senator Mello. I, too, have attempted to reeducate myself on the constitution and realize I probably wasn't educated too well in the first place when I was...or maybe wasn't interested when I was in high school. So the stuff I've handed...the documents I've passed out were prepared at my request by my legislative aide and we've been sitting down and talking about the constitution a great deal. I guess, the reason I will probably not vote for this is because I'm against sending messages that some people may want to hear if the message is that we can turn back the clock, because I think that's a hallow message. I will probably not vote for this because I think the other message is that...and if you really look at the fine points, it's not in the resolution, but the message is that we are a state...we as a state can pick and choose which federal laws to follow if we just know how to change things. And I think that's a hallow message. I did print out the Ninth and Tenth Amendments and I handed that out. And I'd like to start by talking about the Ninth and Tenth Amendments. The Ninth Amendment was adopted to show that the Bill of Rights was not to be an inclusive list. And thank goodness. If the Constitution of the United States were to be written today and you had to include all the rights of citizens with the technology we have now, it would be a document you couldn't carry. But it's very simple. The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people. And then I gave an example, Griswold v. Connecticut, Supreme Court case 1965. And the case that struck down Connecticut's ban on contraception. The Ninth Amendment was used by Justice Goldberg's concurring opinion to strike down the ban because the right to marital privacy was one of the rights retained by the people but not expressly provided to the people in the constitution. So I don't believe that you can just say, you can point to the Ninth Amendment and say that something that's not in print in the constitution is therefore unconstitutional. In fact, what's really interesting about the constitution is that there is nowhere in the constitution that says what's constitutional and what isn't constitutional. And over time the courts have basically...we've accepted in this country that that final arbitrator of what is constitutional and what is not constitutional is the Supreme Court. That's not stated in explicit detail in the constitution. So we do look to the Supreme Court rulings to define what the constitution means. And so I would like to engage Senator Fulton in some questions, if I could please. [LR539]

SENATOR CARLSON: Senator Fulton, would you yield? [LR539]

SENATOR FULTON: Yes. [LR539]

SENATOR HAAR: And, again, this is to expand my knowledge because I need to understand these, just as you've been working on it. Can you give me some examples,

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Senator Fulton, because the resolution states, quote, the U.S. government has historically and continues to expand its enumerated powers in a manner inconsistent with the Ninth Amendment. Could you give me some examples of that, please? [LR539]

SENATOR FULTON: Yes, and thank you for the question. I'm going to say that I will give you examples that I believe personally... [LR539]

SENATOR HAAR: Sure. [LR539]

SENATOR FULTON: ...represent usurpations but... [LR539]

SENATOR CARLSON: One minute. [LR539]

SENATOR FULTON: ...I was careful not to put these examples into here because I recognize there can be differences of opinion. One of the first ones that I started to pay attention to was No Child Left Behind and that is something...and I put it out there because it happened under a Republican administration. I think that what happened with respect to healthcare is beyond the scope of the federal government. I think the bailouts was beyond the scope of the federal government. There are other things that I personally have a problem with and that I don't see that can be reconciled with respect to the constitution. I have not...I have purposefully not put them in here. I'm hoping that we as a body can recognize that our rights as a state, as exercised as state senators, have been challenged by activities of the federal government under many administrations over the course of many years. [LR539]

SENATOR HAAR: Okay, we'll continue the discussion on my next time. Thank you. [LR539]

SENATOR CARLSON: Thank you, Senator Haar and Senator Fulton. (Visitors introduced.) Returning to discussion, those wishing to speak include Senators Christensen, Adams, Fulton, Cook, Avery, Stuthman, and others. Senator Christensen, you're recognized. [LR539]

SENATOR CHRISTENSEN: Thank you, Mr. President. I support this resolution and I'll tell you why. Freedoms of America are being stripped. We, as Americans, have become selfish and we want someone to take care of us. We need to stand up and look out for one another and not have the government do it. Seems to me John F. Kennedy's statement, ask not what your country can do for you, ask what you can do for your country, could be applied to every level of government. This is especially true today when the economy continues to be unhealthy and unemployment remains high. While Washington seems to be trying to solve our country's economic woes by sending all sorts of businesses and citizens checks so they can pay somebody for something, I think it would be a much better approach to take another direction. Wouldn't it be a

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novel idea for government to encourage citizens to think about what they can do for their country or for their county or their city? What they could do, what they can do is volunteer to help perform some service a county or city can no longer afford to provide their citizens. Now I want to make this clear. I don't advocate taking away government workers' jobs away, but if the county or country or city can't afford to provide a service or can't provide it frequently as necessary or desired or someone wants something built or enlarged, why not encourage volunteers to help get it done? I'll bet there are a lot of jobs folks could volunteer for, jobs that people know how to do or that require little training. Retired mathematicians, artists, musicians, athletes, truck drivers, or anyone can perform a needed service, could volunteer to help our country, counties, or cities save money. Please don't expect your country, county, cities to do everything you want or need unless you are willing to pay or help get it done. I think if you think about the message that I read here, I think America has gotten lazy. I think we expect people to do things for us instead of stepping up and doing what's right. And every time we step up and ask somebody to do something for us, we end up giving up more of our freedoms, more of our rights, get more control from our governments. And I think it's very important that we all step back and think about it, not only as we legislate bills in this body but as we watch what the federal government is doing or we look at what our counties and cities are doing. We have too much concentration on what we can get out of it instead of stepping up and seeing what we can do to solve our own problems and better our nation by our work and our service. You know, I'm not standing here necessarily talking so boldly on this resolution as I am maybe we need a gut check of what we're really about as individuals anymore. What do we really stand for? What do we really want to be known for as we go forth in these tough economic times? Thank you. [LR539]

SENATOR CARLSON: Thank you, Senator Christensen. Senator Adams, you're recognized. [LR539]

SENATOR ADAMS: Thank you, Mr. President, members. I wasn't going to say anything on this topic, just sit intrigued, interested in a subject, and listen and watch the clock, prepare to cast a vote. I will support the resolution. But I feel compelled, for whatever reason, to throw something else into the mix. I don't think that this resolution draws any line in any sand. In fact, I'm not sure it ought to. The way I see the Constitution of the United States, it is a living document made up of a delicate host of balances. We balance the vague with the definitive. We balance the power of three branches of government. We balance state versus federal. We balance government versus citizen in the document. It is a delicate balance. And I support the resolution because I think every once in awhile we need to make sure that that balance is still there. We've got to push and shove a little bit from one direction or the other to make sure that the balance is maintained. We can say it's a balance between the Tenth Amendment. It is, delegated rights, but you know what's on the other side? Article I, Section 8, clause 18, Senator Avery has already mentioned it, the "necessary and proper" clause. Let me

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throw one other one at you: Article VI, Section 2 of the constitution: The constitution and all laws made pursuant thereof are the supreme law of the land. It doesn't mean, though, that the constitution is carved in granite. If it did, where would we be at today? It's a living document and part of what makes it live is the pushing match that we have right here on states' rights and we will continue to have over every facet of the constitution for years to come. Probably when the pushing match ends over the constitution, therein lies our real problems. I think our balance is a bit tipped, hence, I'll support this resolution. Thank you, Mr. President. [LR539]

SENATOR CARLSON: Thank you, Senator Adams. Senator Fulton, you're recognized. [LR539]

SENATOR FULTON: Thank you, Mr. President, members of the body. I anticipate that there will be a word beginning with "Q" and ending with "uestion" sometime here in the forthcoming moments, and so there were some points that were raised that I would like to respond to. I appreciate this debate, this back and forth. I recognize we're almost done here and if that "Q" word isn't uttered here pretty soon then I'll request that it be uttered so that we can move along. I thank Senator Adams for what he has said. He very eloquently and succinctly covered what was going through my mind when I decided to bring this resolution. If you pay attention to what happens when you have a delicate balance, the tendency for many is to lurch to this side or the other. We do this in debate here. We do this in debate to highlight a particular tenet that we hold on one side which militates against a tenet that might be on the other side. I use the words "balanced federalism" for a reason. It is both, and. The federal government has authority, enumerated powers. The states also have authority. In the Tenth Amendment, if you read it in its plain English, I suspect most people would say the federal government has set the scales of balance inordinately toward the federal government's favor. So who should bring that up? If the balance is tipped, who has the responsibility to point out that that delicate balance has been tipped? If not a state senator then whom? That's what went through my mind when I was deciding. You've received the same e-mails that I have. Last summer I made the decision that this needs to be said because I do believe that we have reached a point in our nation's history where the states need to stand up and say to the federal government, remember, there is a Tenth Amendment. This does not...and pay attention to what goes on internally in your own mind. Our reactions will be to say, ah, but the federal government, you can't say that because where would we be if we didn't have a strong federal government? Or someone on the other side could say, yeah, you tell those feds, we want them to butt out completely. We have to resist that temptation, we of all people, the few who have been chosen by our friends and our neighbors. They have bestowed upon us this great power. I remember Senator Chambers and it was Senator Loran Schmit who told me when I first came into this body, you have just been given powers, kid, that you have no idea the limits to, or something like that. It was more eloquent. And it's true. We have been given great power as state senators and it's time for us to stand up and say to the

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federal government, you need to pay heed to that Tenth Amendment. Senator White raised the question do states, therefore, have the ability to...and I think the example, and he can correct me if I'm wrong, was to confiscate guns. My response would be that the Tenth Amendment would prohibit that actually. The powers not delegated to the United States by the constitution, nor prohibited to it by the states, I would say that the states are prohibited from exercising that kind of power. Senator Avery brought up, and I think it's a legitimate concern, is this a means of interjecting arguments that argued in favor of slavery into this debate? My response is, no, it is not. You all know my background. That's the furthest thing from my mind. I would remind you that states' rights, the Tenth Amendment particularly, has been utilized to militate against slavery. There's a case in Wisconsin, and I've got to find it again, but I was reading about how a slave had escaped his master in Missouri. [LR539]

SENATOR CARLSON: One minute. [LR539]

SENATOR FULTON: He fled to Wisconsin and the feds had come in to capture him and bring him back. The state of Wisconsin utilized the Tenth Amendment to say that you can't do that. And if we keep going, I'll quote that example, cite it. Senator Council asked where this quotation came from. I was able to find specifically, it was published January 26, 1788, it was the 45th Federalist Paper. That's what's quoted here on page 1. I think that covers the comments that were raised. With that, I'll yield. Thank you, Mr. President. [LR539]

SENATOR CARLSON: Thank you, Senator Fulton. (Visitors introduced.) Senator Cook, you're recognized. [LR539]

SENATOR COOK: Thank you, Mr. President and members of the body. I'm going to use my power in this office to rise in vehement opposition to this legislative resolution. During our 60-day session this year I've heard some pretty offensive proposals brought forward, along with arguments to support them. I think this is the top one, and that's kind of pulling from a really (laugh) long list of items this session. Again, I oppose this proposal. Senator Fulton and many others will argue behind the scenes and among yourselves that it is not coming from a place of hate and fear. I think my direct experience tells me a different story. So I'll ask each of you colleagues, as we spend the next couple of days together, not to rush up to me and try to comfort me in any way because I really don't believe you. The arguments for federalism or against federalism are not a brand new topic here. Senator Avery has brought up the uses of states' rights in the past. I really don't see how we can have a unified national policy on any topic without having federal influence. My preference oftentimes is the federal influence, to be perhaps too honest. Many of you colleagues have gotten up this year and talked about the Nebraska way. I'm a Nebraskan. I have lived here for most of my life. I don't often hear my perspective included in the proposals and arguments that you put forward, so thank God for the federal government. I find it interesting that recent actions by the

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federal government in our time of recession, international financial crisis, that the same actions that lead to discontent and murmuring among members of this body and members of the people who forward e-mails through the LISTSERV took the stimulus funding to plug up a budget hole, to hand it out on main streets across the state for the photo opportunity. I find that very interesting. The United States Constitution is the framework of this nation and, as Senator Adams mentioned, it is adaptable, thank God. Human dignity and rights that were not recognized at the time the document was drafted are now included. The federal government has set inspired national policies, including this President and ones before him, that afford me and many members of Legislative District 13, its residents, constituents, and voters, so much in this lifetime. We've talked about the abolishment of slavery, the fact that slavery did not spread to Nebraska. Women's suffrage: I push the button to vote in here. It's a good thing I have the right to vote and the right to vote for myself to get here. I don't know if we were waiting on states' rights, particularly in the state of Nebraska, one of the last to ratify that amendment, if that would have happened. The Civil Rights Act of 1964, the Voting Rights Act of 1965, I am very pleased that our states' laws are influenced by federal policymakers, by the executive branch, and by the judicial branch. Thank you, Mr. President. [LR539]

SENATOR CARLSON: Thank you, Senator Cook. Senator Avery, you're recognized. [LR539]

SENATOR AVERY: Thank you, Mr. President. I want to say how much I appreciated the comments of Senator Cook. I have never seen her more passionate and more eloquent. Also, my colleague Senator Adams, he...I can visualize him in the classroom teaching his government classes when he was going through his rendition of the flexibility of the constitution. He's right, it is a flexible document, but that does not mean it doesn't have some historical significance, and what happened in the past and how elements of that constitution have been used are irrelevant to today. I ended in my previous time on the mike talking about the nullification movement. That was led by John C. Calhoun where he tried to use the concept of states' rights to nullify a federal law, basically saying that the state of South Carolina did not have to respect a law of the federal government on a particular federal tariff issue. Well, the federal government intervened and threatened physical force against South Carolina and Calhoun had to back down. Calhoun became the poster child for nullification theory and states' rights of his era. Andrew Jackson made what I think was a powerful defense of federalism and a powerful defense of a unified federal government when he said that the doctrine of nullification and the doctrine of states' rights is incompatible with the existence of the Union, contradicted expressly by the letter of the constitution, unauthorized by its spirit, inconsistent with any principle on which it was founded, and destructive of the great object for which it was formed. I side with Andrew Jackson. He also said that no federative government could exist if we insisted on elevating states' rights to the level that we are talking about today. He went on to say that the premise of nullification of states' rights is the great...is

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essentially that the United States is not a nation. Let me ask you a question. If the Antifederalists had prevailed in the early part of our history, where would we be today as a nation state? We would not have the means, nor would we have the will, to develop global military reach that has given us the ability to extend our influence around the world and has enabled us to exercise world leadership. We are the world's leader and we have accepted that role willingly and gladly, and we have invested enormous resources in that. We could not have done that as 13 separate states or 50 separate states all going 50 different directions. Think about this, folks. I'm asking you not to look at this as a liberal or conservative issue. It's not a partisan issue. The issue is whether or not we are a nation state united behind a federal government. It's not perfect, of course it's not. Or are we going to side with efforts to cast dispersions on the federal government, efforts to undermine the federal government and its authority all for some temporary political gain or some temporary feel good. I can tell you that I have not been immune to e-mails. Senator Fulton has talked often... [LR539]

SENATOR CARLSON: One minute. [LR539]

SENATOR AVERY: ...about his e-mails. Let me read to you a little bit of my e-mail: The bottom line is this, Senator. I am sick of Washington trying to ram the liberal agenda down my throat. What the "H" has happened to representative government? Get on board, Senator. It's time for Nebraskans and all Americans to say enough is enough. I could go on, but here's my favorite: With all due respect, sir, you are a scumbag. Thank you. (Laughter) [LR539]

SENATOR CARLSON: Thank you, Senator Avery. Senator Stuthman, you're recognized. [LR539]

SENATOR STUTHMAN: Question. [LR539]

SENATOR CARLSON: The question has been called. Do I see five hands? I do. Question is, shall debate cease? All those in favor vote yea; all opposed vote nay. Record, Mr. Clerk. [LR539]

CLERK: 28 ayes, 4 nays, Mr. President, to cease debate. [LR539]

SENATOR CARLSON: Thank you. Debate does cease. Senator Fulton, you're recognized to close on LR539. [LR539]

SENATOR FULTON: Thank you, Mr. President. I am...do we have adequate...okay. Okay, I thank you for this. You have indulged me because I brought this resolution but we had some cosponsors here also. You've indulged us. We've had a meaningful debate and I think what happens today is I think in having this debate we show why this resolution is necessary. First, I'd like to start by saying, with all due respect to Senator

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Avery, I probably wouldn't call that my favorite e-mail but I will not...I will refrain from using that word when I respectfully disagree with his position. I think that it is important that we have this debate because the balanced federalism that is supposed to govern our land is out of balance. And, again, I'm going to ask you to pay close attention introspectively, pay attention to how we react to a strong position that's given. We tend to react by running the other way and adopting the opposing position, unless we're in favor of that position. But it's both, and. It is not either the federal government or the state. It is both, and. Why do we accept money from the federal government? Does that, therefore, mean we are opposed to the Tenth Amendment? My wife asked me that question. It's a good question. We have these debates in my house. It's a good question. I ask you to bear in mind the premise behind that question. The premise is that that money belongs to the federal government. It does not, not any more than the money that we appropriate belongs to the state government. To be pure about it, that is the people's money. I got up and I spoke, it was a couple of weeks ago, on a bill that Senator Fischer carried and it was a bill having to do with ignition interlock, something that I've carried for the past few years. There was a decision made in Washington that was in disagreement with a bill that we had passed a year ago and in order for us to continue receiving federal money, part of which is our money, we had to change our law. I look at the Tenth Amendment, I read it, and after having taken part in that I voted for that, and I had some problems when I voted for it but that's the way that we're operating today. If that is not indicative of a need to shine light upon the Tenth Amendment, I don't know that there is any. There are no other ways that we can shine light on it. We are not a subsidiary of the federal government. Cities, counties, and school boards are political subdivisions of the state of Nebraska. The state of Nebraska is not a political subdivision of our federal government. There's a difference. The general principle of subsidiarity is not absolute, so we are not agents of the federal government. We are independently elected by the people of the state of Nebraska. So I ask you to vote in favor of LR539. This is...the words are here on the paper. It's important that we have this debate but at the end of the day you're voting on the words on the paper. I have worked on this for about a year, so I'd very much appreciate your vote in favor. I understand if you vote against. I respect everyone's right to do so. But, Mr. President, with that, I will yield. I thank the body. Thank you, Mr. President. [LR539]

SENATOR CARLSON: Thank you, Senator Fulton. Members, you've heard the closing on the resolution. The question is, shall LR539 be adopted? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LR539]

CLERK: 39 ayes, 3 nays, Mr. President. [LR539]

SENATOR CARLSON: LR539 is adopted. Speaker Flood, you're recognized for an announcement. [LR539]

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. I wanted to

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give you an update as to the number of bills the Governor still has in his possession. I've had several conversations with him and members of his administration, and I can report to you, as has been the case every year that I've been the Speaker, there will be no pocket vetoes. I imagine we'll adjourn today without receiving some of those bills back. To the extent any bill is vetoed, the Legislature will have an ability to override the same tomorrow, if an appropriate motion is filed. I just wanted each of you to know that as we adjourn today, if your bill is not back, that we do have that gentleman's agreement with the northeast corner of the building and hopefully we'll have enough time tomorrow, we will have enough time tomorrow, regardless, to handle all the business before us. We will be going into session tomorrow at 1:30 p.m. Bills will be delivered to the Clerk's Office, as is customary. If your bill is vetoed, I'm sure the Clerk and/or myself or others will contact you to make you aware of that. Thank you once again and I just wanted to say I appreciate the Governor and his staff for working with us on this so that we can end our sixtieth day tomorrow and adjourn sine die tomorrow afternoon or early evening. Thank you.

SENATOR CARLSON: Thank you, Speaker Flood. Mr. Clerk, next item.

CLERK: LR556 by Senator Pahls was introduced on April 9, Mr. President. [LR556]

SENATOR CARLSON: Senator Pahls, you're recognized to open. [LR556]

SENATOR PAHLS: Thank you, Mr. President and members of the body. This legislative resolution is in support of National Foot Health Awareness Month. LR556 focuses on serious foot problems associated with diabetes. The American Diabetes Association estimates that more than half of all people with diabetes will develop some type of foot disorder. More than 103,000 Nebraskans age 18 or older have diabetes. An additional 63,000 have been diagnosed with prediabetes, placing some 83,000 adult Nebraskans at risk. LR556 recommends that future legislation on the care and treatment of diabetes should include testing and treatment of diabetic foot issues. As we know with the cost of health, diabetes is one of the most costly issues to have...health issues to have, and I would appreciate your support on this resolution. Thank you. [LR556]

SENATOR CARLSON: Thank you, Senator Pahls. Members, you've heard the opening on LR556. Are there senators wishing to speak? Seeing none, Senator Pahls, you're recognized to close. Senator Pahls waives closing. The question is, shall LR556 be adopted? All those in favor vote yea; opposed vote nay. [LR556]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Mr. Clerk, please record. [LR556]

CLERK: 46 ayes, 0 nays, Mr. President, on the adoption of LR556. [LR556]

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SPEAKER FLOOD: LR556 is adopted. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR452, LR542, LR273, LR411, LR538, LR539, and LR556. Mr. Clerk, items for the record? [LR452 LR542 LR273 LR411 LR538 LR539 LR556]

CLERK: Mr. President, communications from the Governor. (Read re LB712, LB801, LB817, LB842, LB849, LB877, LB945, LB950, LB1010, LB1094, and LB1094A.) A second communication. (Read re LB594 and LB1103.) Judiciary Committee offers LR571, Mr. President, a study resolution. I have a Reference report. Name adds: Senator Cook would like to add her name to LR556, and Senator Langemeier to LR567. (Legislative Journal pages 1458-1459.) [LB712 LB801 LB817 LB842 LB849 LB877 LB945 LB950 LB1010 LB1094 LB1094A LB594 LB1103 LR571 LR556 LR567]

And, Mr. President, a priority motion: Senator Conrad would move to adjourn the body until Wednesday afternoon, April 14, at 1:30 p.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel)